Ministry of Finance

PUBLIC PROCUREMENT BUREAU

REPORT

ON ACTIVITIES OF THE PUBLIC PROCUREMENT BUREAU IN THE FUNCTIONING OF THE PUBLIC PROCUREMENT SYSTEM IN 2009

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Introduction

Public Procurement Bureau (hereinafter: Bureau) is an institution which ensures, on national level, monitoring, development and improvement of the public procurement system, by securing legality, rationality, efficiency, transparency, equal treatment, non-discrimination and competition encouragement, as well as implementation of training programme on public procurement. Competences of the Bureau are stipulated in paragraph 1, Article 14 of the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", nos. 136/2007 and 130/2008).

Pursuant to indent 14, paragraph 1, Article 14 of the Law on Public Procurement, the Bureau submits this Report on Activities in the Functioning of the Public Procurement System in 2009 to the Government of the Republic of Macedonia.

With this Report, the Bureau informs the Government of the Republic of Macedonia and the broader public on its activities aimed at monitoring, developing and improving the public procurement system, as well as the process of harmonisation of the national legislation with the EU legislation on public procurement and implementation of best practices in this area, preparation of Draft Law on Modifications and Amendments to the Law on Public Procurement, organizing train-the-trainer courses on public procurement and trainings on proper application of the provisions of the Law on Public Procurement for contracting authorities and economic operators, statistical data on carried out procedures and concluded public contracts on national level in 2009, as well as on detected irregularities when carried out and recommendation given to overcome them and improve public procurement system in general.

After the Government of the Republic of Macedonia adopts this Report, it will be available to the public on the website of the Public Procurement Bureau,

http://javni-nabavki.finance.gov.mk and http://bjn.gov.mk.

1. Normative Activities

1.1 Law on Public Procurement

Current Law on Public Procurement ("Official Gazette of the Republic of Macedonia", nos. 136/2007 and 130/2008) was adopted by the Parliament of the Republic of Macedonia on 6 November 2007 and it entered into force on 1 January 2008.

According to the assessment of the European Commission, the text of the Law is of good quality, being highly harmonised with the respective EU Directives in the field of public procurement. EU Directives on Public Procurement adopted by the European Parliament and the Council on 31 March 2004 are incorporated in the Law on Public Procurement, as follows:

- Directive 2004/17/EC of the European Parliament and of the Council of 31st March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector;
- Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contract; and
- Commission Directive 2001/78/EC of 13th September 2001 on the usage of standard forms during the publication of contract notices.

In addition, the Law also incorporates the existing Remedies Directives in the contract award procedures, i.e.:

- Council Directive 1986/665/EEC of 21st December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and
- Council Directive 1992/13/EEC of 25th February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

In addition, the Law includes the main provisions envisaged under the new Directive 2007/66/EC of the European Parliament and of the Council of 11th December 2007 amending Council Directives 86/665/EEC and 92/13/EEC with regard to improving the effectiveness of remedies system concerning the award of public contracts.

Law on Public Procurement shows greater flexibility in the implementation of contract award procedures resulting from its provisions, as well as more detailed provisions regulating the general and the special conditions for implementation of the procedures, utilities contracts, review procedures, etc.

Two-year application of the Law, being the first Law at this level of harmonisation with the respective EU acquis in the field of public procurement, shows many positive aspects in the functioning of the public procurement system, as follows:

- increased transparency through the mandatory electronic publication of contract and contract award notices on the Web Publication System of the Public Procurement Bureau;
- new Web Publication System, the application of which started from 1st January 2008, arising as a need according to the legal obligation for mandatory electronic publication of contract and contract award notices, is fully functional and operating. One may conclude that it fully met the expectations of the contracting authorities and the economic operators regarding the accuracy and the effectiveness of informing the public on the needs for public procurement of the contracting authorities and the contracts awarded to the economic operators. Activities undertaken for

integration of the Web Publication System and the Electronic System for Public Procurement are expected to increase the functionalities of the new Integrated System for Public Procurement by simplifying the procedure for the contracting authorities to publish contract and contract award notices with electronic means;

- advantage for the contracting authorities in terms of timely meeting of their needs for supplies, services and works through the shortened time limits for submission of tenders i.e. requests to participate;
- increased procurement efficiency by applying the simplified contract award procedures (simplified competitive procedure with and without publication of a contract notice). These procedures stipulate shorter time limits for submission of tenders and submission of simplified documentation for the contracts with lower estimated value than the regular value thresholds stipulated by the Law.

It is worth mentioning that the Law on Public Procurement fully incorporates the new terminology envisaged under the respective EU Procurement Directives in this field. Although, at the beginning, this might had been foreseen as a difficulty by the entities applying the Law, however, during its implementation, contracting authorities and economic operators fully accepted the usage of the new terminology of the Law.

Other more significant novelties incorporated in the Law are the following:

- stipulated more liberal regime of awarding public contracts for so-called "non-priority services", i.e. services prescribed in indent 2, paragraph 1, Article 17 of the Law on Public Procurement;
- introduction of the possibility to establish central purchasing body;
- new manner of evaluating the value of public contracts, excluding VAT;
- new rules for preparation of tender documents and technical specifications;
- introduction of new contract award procedures, such as competitive dialogue, negotiated procedure with prior publication of a contract notice and simplified competitive procedure with and without publication of a contract notice for the contracts of relatively lower value;
- more detailed elaboration of the requirements for conclusion of framework agreements and implementation of electronic auctions;
- determining activities for which utilities contracts are awarded and procedures for awarding such utilities contracts;
- precisely set review procedures and requirements on the basis of which appeal is lodged.

One of the most significant novelties envisaged with the new legal framework is also the new remedies system in the contract award procedures, which foresees the newly established State Appeals Commission (hereinafter: Appeals Commission), playing the central role. In fact, establishment of the State Appeals Commission has led to application of the new remedies system in contract award procedures.

Progress in the public procurement system, including the part covering the creation and the implementation of the existing legal framework, was also witnessed by the European Commission in the 2009 Progress Report for the Republic of Macedonia. The Report included conclusion of the Commission that good progress regarding the general principles was achieved through the new Law on Public Procurement. The Commission has emphasised that the Law, in general, transposed the EU Acquis. Main points of the Commission included in the Report regarding public procurement system were that significant improvements were made in terms of the contract award procedures, legal personality of the Bureau, remedies system, and the harmonisation of the contract award procedures with the new rules on public procurement was also increased. With regard to the Public Procurement Bureau, it was indicated that although there was no sufficient staff and adequate

premises, it managed to develop its ability and its proactive approach in the public procurement policy management. Introduction of the new remedies system under the Law was pointed out as huge progress. However, it was stated that further changes would be necessary for achieving harmonisation with the amended EU Remedies Directives. The Commission encouraged the ongoing efforts for training the contracting authorities and the economic operators in the new public procurement rules to continue in future.

In the course of 2009 as well, the Bureau continuously monitored the functioning of the public procurement system and the implementation of public procurement regulations, and it analysed of the needs to amend and improve the regulations to the end of system promotion. Analyses were made through monitoring and recording all requests for opinion the contracting authorities and the economic operators submitted to the Bureau so as to obtain instructions on the provisions in the Law and identify issues that were most unclear to the contracting authorities and the economic operators.

1.2 Law on Modifications and Amendments to the Law on Public Procurement

Adoption of modifications and amendments to the Criminal Code in 2009 imposed the need to modify and amend the Law on Public Procurement accordingly, which was realised by preparing Law on Modifications and Amendments to the Law on Public Procurement. In fact, adoption of modifications and amendments to the Criminal Code imposed the need for it to be harmonised with many laws, among which the Law on Public Procurement.

Therefore, in the period from October 2009 by the end of the year, the Bureau worked intensively on modifications and amendments to the Law, all aimed at its harmonisation with the provisions in the Criminal Code.

One of the more significant novelties, introduced with the modifications and amendments to the Criminal Code, is the criminal liability for legal entities and, consecutively, introduction of respective sanctions. Article 10 of the Law on Modifications and Amendments to the criminal Code envisage changes to the provisions in the whole chapter of the General Provisions of the Criminal Code, which cover sanctioning of legal entities, and proposed changes supplement the scope of secondary sanctioning and set conditions for their pronouncement.

Such modifications and amendments to the Criminal Code reflected on the section of the Law on Public Procurement that regulates awarding of public contracts and determining qualifications, personal situation of the economic operator.

Pursuant to these legal provisions, economic operator may be excluded from the contract award procedure if it is in bankruptcy or liquidation procedure. Other reason for exclusion of economic operator is failure to fulfill the obligations towards the state or the municipality, i.e. failure to pay taxes, contributions or other public duties. In addition, economic operator may be excluded from the contract award procedure on the basis of pronounced sanction for misdemeanour resulting in prohibition for pursuing professional activity. Economic operator presenting false information or not presenting the information required by the contracting authority may be also excluded from the procedure.

Taking into account that pronounced sencondary sanctions – prohibition to participate in contract award procedures would mean that the economic operator being pronounced such sanctions should be excluded from the procedure if it submitted a tender or request to participate, need has arisen for respective changes of the Law on Public Procurement in the section regulating the personal situation of the economic operator.

As a result of the above-mentioned reasons, the Bureau proposed the modification and the amendments to the Law on Public Procurement to the Minister of Finance.

1.3 Bylaws

Law on Public Procurement envisages 14 bylaws so as to facilitate its implementation. All envisaged bylaws were adopted within the envisaged deadline. Taking into account that pursuant to latest modifications and amendments to the Law, new training model in public procurement was introduced, and as a result of the integration of both electronic systems for public procurement, four new rulebooks were adopted in the course of 2009:

- Rulebook on the programme, the manner of carrying out the exam, the amount of the fee, as well as the form and the contents of the certificate ("Official Gazette of the Republic of Macedonia", no. 157/09). This Rulebook stipulates the programme, the manner of carrying out the exam, the amount of the fee, as well as the form and the contents of the certificate. The Rulebook defines the training programme as a two-part programme as follows: train-the-trainer module and module covering the training of contracting authorities and economic operators. In fact, when carrying out public procurement trainings so far, it was necessary for the Bureau to refer to entities, such as SIGMA and USAID, to be extended assistance and support so as to organise the trainings. Preparing such programme would make the Bureau able to independently organise the necessary trainings in the field of public procurement. This will be possible through independently prepared modules on the basis of which the trainings will be carried out. Quality of training materials and the volume and the contents of the trainings are expected to increase with the training programme of the Bureau;
- Rulebook on the format and the contents of the notice, the notice on cancellation of contract award procedure and the form of the records of the simplified competitive procedures, published in the "Official Gazette of the Republic of Macedonia", no. 161/09, regulating the standard forms on simplified competitive procedures, as well as records therefrom;
- Rulebook on the format and the contents of contract and contract award notices, published in the "Official Gazette of the Republic of Macedonia", no. 161/09, regulating the standard forms for contract notices, as well as contract award notices;
- Rulebook on the manner of using the Electronic System of Public Procurement, published in the "Official Gazette of the Republic of Macedonia", no. 161/09, and
- Decision on modifications and amendments to the Decision on determining Indicative List of Contracting Authorities, published in the "Official Gazette of the Republic of Macedonia", no. 74/09.

Thus, in 2009, the Bureau completed the process of preparation of bylaws regulating and stipulating in details certain aspects of contract award procedures as regards notice publication, cancelation and records, as well as training in public procurement, arising as an obligation from the Law, all aimed at facilitating its implementation.

1.4 Tender Documents and Model Contracts

In the course of 2009, the Bureau, to the end of completing the models of standard tender documents, also prepared model of standard tender documents for the negotiated procedure with prior publication of contract notice. Model of standard tender documents was prepared in line with the Rulebook on the Contents of Tender Documents, with SIGMA assistance.

In addition, having the needs of contracting authorities and economic operators as a starting point, as well as the commitments of the Government of the Republic of Macedonia to increase application of IT technologies, the Bureau, in cooperation with USAID, also prepared models of standard tender documents for the procedures for which e-procurement is allowed.

Hence, in addition to the model of standard tender documents for open procedure for supplies carried out through the ESPP, models of standard tender documents were also prepared for the

following:

- simplified competitive procedure with publication of a notice through ESPP;
- simplified competitive procedure with publication of a notice through ESPP ending with e-auction;
- simplified competitive procedure with publication of a notice in a paper form ending with e-auction;
- open procedure carried out in a paper form ending with e-auction, and
- open procedure carried out through ESPP ending with e-auction.

1.5 Publications

Taking into account the positive reactions by the contracting authorities and the economic operators regarding the three brochures being prepared last year, aimed at getting the public acquainted with the novelties in the national legislation on public procurement, in 2009, the Bureau started preparing new brochures. They cover the following:

- Manual on determining qualifications of economic operators in contract award procedures;
- Manual on awarding non-priority ("B") services, and
- Framework Agreements – EU regulations and experience.

Manual on determining qualifications of economic operators in contract award procedures was prepared with SIGMA assistance. Objective of this Manual is to provide guidelines to the contracting authorities as regards the following:

- how to determine and apply selection criteria for the economic operators in contract award procedures;
- how to assess whether an economic operator, interested in participating in the procedure, meets the selection criteria, and
- how contracting authorities to manage the process of qualifications and selection of economic operators in different contract award procedures.

Thereby, the Manual analyses the above-mentioned issues from EU perspective, as well as from the point of view of Macedonian regulations on public procurement.

Manual on awarding non-priority ("B") services is of great importance for strengthening the capacities of the professional service staff with the contracting authorities on awarding public contracts the subject-matter of which, as regards EU Acquis, are services called "non-priority services" or "B" services and, as regards the Macedonian public procurement system, they are referred to in indent 2, paragraph 1, Article 17 of the Law on Public Procurement, as well as in the new Decree on services subject-matter of public service contracts. Neither EU Acquis nor the Macedonian legislation define a specific procedure to be applied when awarding such public contracts. However, such public contracts, when awarded in EU Member States, are subject to several provisions in the EU Acquis – Public Procurement Directives, should their value be equal or exceed certain thresholds set in EU Directives, and they should be awarded by observing the provisions in the primary legislation in the EU and its fundamental principles.

Manual on Framework Agreements – EU regulations and experience refers to the advantages framework agreements offer, how they are regulated in EU Directives, also elaborating the use of framework agreements in practice.

All manuals are available in an electronic form, accessible, free of charge, on the website of the Public Procurement Bureau.

In addition to the technical activities related to integration of both electronic systems for public

procurement, in November 2009, the Bureau, supported by USAID e-Government Project, prepared and published two brochures on specific aspects of usage of ESPP so as to facilitate its use. One of the brochures covers the manner of using user names and passwords in ESPP, while the other brochure refers to the manner of filling in the e-forms and attaching e-documents in ESPP. The brochures were printed in 4.000 copies - 2.000 copies of each brochure, and they were distributed at the numerous trainings and promotion events held at the end of the year.

1.6 Prepared Opinions on the Application of the Law on Public Procurement

During 2009, the entities to which the Law on Public Procurement applies, as well as the economic operators, submitted 490 requests to the Public Procurement Bureau for opinions regarding the application of both the Law on Public Procurement and the bylaws. In addition to official letters, contracting authorities and economic operators also exercise the right to require opinion and advice by the Bureau through the web contact form of the Bureau, available free of charge on its website. All requests were provided replies within the stipulated deadline.

On the basis of the carried out analysis about which parts of the Law the requests for opinion submitted to the Bureau most often referred to, one may conclude that these are the parts of the Law being introduced as novelty in the national legislation. Thus, in 2009, the questions that needed for clarification and opinions about certain legal provisions most often referred to the following:

- how non-priority services are procured (in particular hotel and catering services, translation services, temporary employment, etc.);
- right to participate in the contract award procedures, in particular with regard to the right for engagement and participation of subcontractors;
- manner of submission, return and fulfillment of the conditions for collection of the tender guarantee and the performance guarantee;
- conditions, according to which, the contracting authority may apply the negotiated procedures with and without prior publication of a contract notice;
    - simplified competitive procedure with and without publication of contract notice, regarding the value thresholds, the simplified tender documents, the necessary documentation to demonstrate the qualifications, the manner of keeping semi-annual records of the carried out procurement through these procedures, etc.;
- implementation of framework agreements;
    - questions related to the selection criteria regarding the types of submitted documents and the contract award criteria with respect to the elements of the criterion – economically most advantageous tender, which the contracting authority may apply;
- fulfillment of conditions for cancelling the procedure;
    - introduction to e-procurement and how it is carried out. Questions most often about Articles 121-128 of the Law, i.e. how e-auction is carried out, its stages, whether it can be used when the criterion is the economically most advantageous tender, whether e-auction is deemed as carried out even when it is cancelled (in terms of the amendments to the Law and the obligation for the percentage of assessed value of contracts to be carried out with e-auction), whether when only one tender is submitted in the procedure ending with e-auction the e-auction should be carried out, etc.
- questions related to public opinion and continuation of the procedure when the contracting authority has received only one tender;

- the cases when exclusions from the Law can apply;
- questions related to the authorised person to adopt the annual plan for public procurement;
- questions related to application of provisions from the Law allowing increase of quantities in the original contract;
    - questions as regards when joint contract award procedure can be carried out pursuant to Article 24, mainly in terms of who can be member of the group of contracting authorities (which requirement should be met) and what is necessary to regulate the contract on jount procurement;
    - questions pertaining to the manner of acting in cases when tendered prices exceed the amount of funds necessary to execute the contract determined with the initial procurement decision and whether such tenders are considered as unacceptable tenders;
    - how the economic operator can have insight in the documents in the tenders of other economic operators so as to prepare its appeal, and
- which persons can be members of the public procurement commissions, i.e. do they have to be just employees with the contracting authority.

The Bureau, through its web contact form on the website, received around 512 questions from institutions, public enterprises, economic operators and individuals regarding the manner of applying certain provisions of the Law or request for certain manners of acting in a given situation. Average response time to these questions is less than one business day. Questions which the responses refer to are similar to the ones posed in the official letters sent to the Bureau.
At the same time, the Bureau is open for communication with the public through its hot line on daily basis, providing expert assistance to the contracting authorities and the economic operators, by answering the questions asked related to the legal framework for public procurement and its practical application.

1.7 Public Information

In the period 1 January 2009 – 31 December 2009, the Bureau, as holder of public information, acted upon total of 4 submitted requests for access to public information. These requests referred to the total number of concluded public supply contracts, public services contracts and public works contracts in the course of 2008, as well as the value of each contract separately.

In addition, requests for access to public information the Bureau received in 2009 were for data pertaining to procurement of services for public campaign carried out by the Government of the Republic of Macedonia during the election campaign in 2009, as well as for all other services for public campaing for which there were information on the Bureau's website that contracts were signed in the period during the election campaign.

All submitted requests for access to public information received positive reply and none of the submitted requests was refused pursuant to Article 6 of the Law on Free Access to Public Information.

At the same time, in 2009, applicants for information neither lodged objections against the decisions of the Bureau regarding procedures for obtaining public information nor they initiated administrative disputes.

1.8 Objections

Taking into account the provisions in the Law on Acting upon Objections and Proposals ("Official Gazette of the Republic of Macedonia", no. 82/08) and Rulebook on the Manner of Acting upon Objections and Proposals ("Official Gazette of the Republic of Macedonia", no. 2/09), Public Procurement Bureau appointed authorised persons to act upon objections and proposals.

Objections submitted to the Public Procurement Bureau referred to the manner of operations of the State Appeals Commission and of the contracting authorities. As a result of not being in charge of acting upon the submitted objections, entities submitting the objections were informed to refer to the competent bodies to which operations the objections referred.

1.9 Written Internal Procedures of the Bureau

In 2009, the Bureau, as part of the activities for preparation of written internal acts with rules on acting for the employees when performing their duties and working tasks, prepared set of written procedures. Written procedures closely regulate certain aspects and deadlines, as well as the workflow, including segregation of duties when carrying out specific activity.

Following are the activities for which written procedures within the scope of operations of the Bureau were prepared:

- preparation of draft Law and bylaws, the objective of which is preparation of law and bylaws;
    - giving opinion pursuant to the Law on Public Procurement through the web contact form of the Bureau, to the end of providing opinion related to the provisions and the application of the Law on Public Procurement so as to give advice and assistance to the contracting authorities and the economic operators through the web contact form of the Bureau;
    - giving opinion pursuant to the Law on Public Procurement, to the end of providing opinion related to the provisions and the application of the Law on Public Procurement so as to give advice and assistance to the contracting authorities and the economic operators;
- procedure for realisation of procurement and payment of invoices, to the end of realising the need for procurement and paying invoices upon realised procurement;
- procedure for realisation of public procurement training programme;
- procedure for preparation of public procurement training programme;
- procedure for preparation of manuals on application of the Law on Public Procurement;
- procedure for cooperation with international bodies and other relevant institutions, to the end of preparing platform for cooperation with international bodies and other relevant institutions;
- procedure for preparation of reports upon the National Programme for Adoption of the Acquis (NPAA);
- procedure for organising national and international seminars and conferences on public procurement;
- procedure for maintaining/updating Bureau's web portal, so as to maintain and update it with new contents, web-forms and news;
- procedure for preparation of opinions on using the ESPP, to the end of preparing opinions on the usage of the electronic system for public procurement;

- procedure for registration of contracting authorities and economic operators on ESPP, so the objective of which is registration of contracting authorities and economic operators on ESPP so as to be able to use it;
- procedure for publishing notices on ESPP and detecting irregularities, to the end of publishing contract award notices and records on simplified competitive procedures, identifying irregularities and contacting the contracting authorities so as to correct them;
- procedure for preparation of Annual Report of PPB, the objective of which is to prepare Annual Report on Operations of the Public Procurement Bureau and analyse the public procurement system on annual basis;

- procedure for preparation of different types of reports (semi-annual, quarterly, ad hoc), to the end of preparing different types of reports for the needs of the Bureau and the other entities;
- procedure for preparation of invoices and monitoring the collection of claims, to the end of preparing invoices and settling claims of the Bureau, and
- procedure for preparation of e-bulletin, to the end of preparing e-bulletin and its publishing on the Bureau's website.

2. Public Procurement Bureau

2.1 Competences, Organisational Setup and Structure

Public Procurement Bureau is a legal entity within the Ministry of Finance, carrying out the tasks related to the development of the public procurement system, as well as ensuring rationality, efficiency and transparency in the procurement processes.

Starting 1 September 2009, the Bureau became legal entity. By becoming legal entity, need arose for the Bureau to make new organisational structure so as to cover all competences of the Bureau and the independent operation Units.

In September 2009, organisational setup of the Bureau comprised two Departments, each of them consisting of two Units.

In September 2009, new Rulebook on Systematisation of Working Posts in the Bureau was adopted, as well as new Rulebook on Organisational Setup and Operations of the Bureau, thus changing the number of Units within the Departments and establishing one more independent Unit. In addition, two new working positions for State Advisers were added.

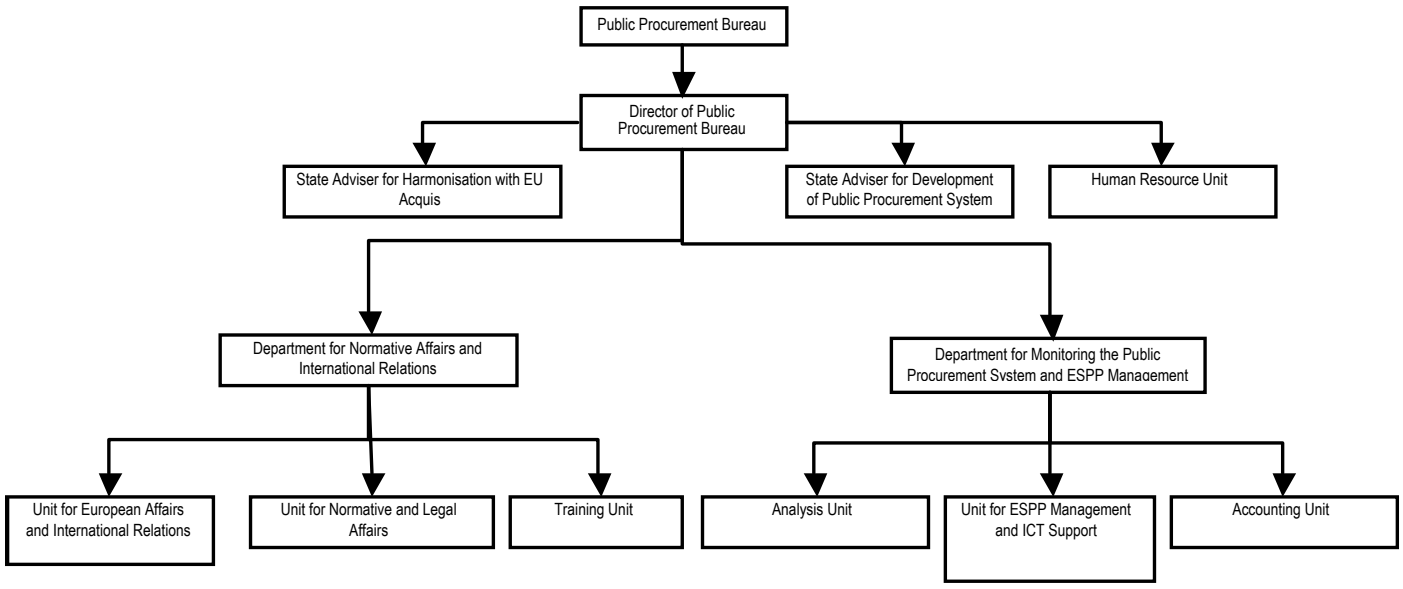
Department for Normative Affairs, Training and International Relations comprises three Units, as follows:.

- Unit for European Affairs and International Relations,
- Unit for Normative and Legal Affairs, and
- Training Unit.

Department of Monitoring the Public Procurement System and ESPP Management also comprises three Units, as follows:

- Unit for Review, Analysis and Preparation of Statistical Reports,
- Unit for ESPP Management and ICT Support, and
- Accounting Unit.

Human Resource Unit was established as an independent unit, due to the need to manage human resources, which was carried out by the Ministry of Finance previously. Bureau's organisational chart is shown below.



As of 2009 inclusive, the Bureau employed total of 11 employees, as follows:

- 4 Bachelors of Law,
- 3 Bachelors of Economics,
- 1 Bachelor of Civil Engineering,
- 2 IT Engineers, and
- 1 administrative employee.

Two new full-time employments took place in 2009, bachelor of law and bachelor of electrical engineering.

In future, strengthening both the administrative and the institutional capacity of the Bureau is also a significant step to be undertaken for adjusting the administrative system necessary for the functioning of the public procurement legislation.

2.2 Institutional/Administrative Capacity

In addition to the Rulebook on Systemat isation of Working Posts and Rulebook on Organisational Setup and Operations of the Bureau, for the needs of the Bureau, and to the end of storing the documents, Plan on Archive Signs was adopted for the purpose of arranging acts, as well as a List of Archive Materials of Permanent Value and List of Documented Materials, with deadlines for their storage.

At the end of 2009, manuals, orders and rulebooks on Bureau's operations were adopted, such as Manual on Procedures regarding Request for Business Trip Abroad, Rules and Procedures on Working Hours, Rulebook on Code of Ethics, as well as other acts ensuring smooth operations of the Bureau.

2.3 Vocational Training of the Employees

Taking into account that one of the Chapters for which negotiations for EU accession will be conducted is the Public Procurement Chapter, strengthening the administrative capacity of the employees with the Bureau, responsible for monitoring and development of the national public procurement system, as well as its improvement, is of exceptional importance.

Human resources is one of the main elements in each institution. Well-trained, competent, motivated and dedicated employees play significant role in attaining high quality when performing the working tasks. Hence, the Bureau will continue building the status of an attractive institution, which offers its employees adequate working conditions and career promotion. To the end of ensuring sustainable human resource management system, both in quantitative and qualitative terms, series of activities were undertaken so as to ensure continuous development of professional and expert abilities of the employees by attending seminars, trainings, visits to institutions and exchange of experience with experts working on public procurement.

In the course of 2009, employees in the Bureau attended the following trainings:

- Workshop in Vienna on development of solutions related to electronic public procurement in line with EU Directives; At this workshop, Bureau staff was provided the opportunity to be introduced with the public procurement systems in other countries – EU Member States;
- Training of officials in charge of disclosing public information;
- Seminar on pre-accession instruments – TAIEX;

- e-Government Project in Macedonia and best EU practices (Slovenian experience);
- Workshop on Introducing Green Procurement in the Republic of Macedonia - future possibilities, obstacles and steps; Initiative for organising this workshop was placed by the Dutch Ministry of Housing, Spatial Planning and Environment;
- Classification of public data, public administration and the European Union, organised by Civil Servants Agency;
- Managing and maintaining Microsoft Windows Server 2003 Environment; implementing and administering Internet – Information Services (IIS) 6.0 for Windows Server 2003; maintaining Microsoft SQL Server 2005 Database; implementing Microsoft SQL Server Database, CISKO courses, supported by USAID;
- Review procedures in public procurement in the EU and EU candidate countries, organised in cooperation with SIGMA;
- Panel Meeting on SIGMA project on training in public procurement for IPA countries, organised by SIGMA;
- Seminar on procurement of supplies and works and selection of consultants, organised by the World Bank;
- Forum on public procurement, organised by the World Bank;
- Second International Conference – Review on public procurement and remedies system, organised by SIGMA;
- Seminar on public procurement, organised by the Anti-Corruption Project;
- Seminar on application of provisions in the Law on General Administrative Procedure, organised by the Ministry of Justice;
- Training for Macedonian judiciary in European and international law on public procurement, organised by the Academy for Training of Judges and Public Prosecutors and GTZ;
- Seminar on public procurement procedures, organised by the Academy for Training of Judges and Public Prosecutors and GTZ;
- Seminar on anti-corruption measures, held in Belgium;
- Workshop on WTO's GPA, held in Austria;
- Panel Meeting on SIGMA project on training in public procurement for IPA countries, held in France;
- Study tour to institutions in charge of public procurement in France, organised by EC - TAIEX;
- Pilot training on testing modules of training in public procurement for IPA countries, organised by SIGMA;
- Study tour for public procurement in Germany, organised by the Bavarian Ministry of Economic Affairs, Infrastructure, Transport and Technology, and
- Two 3-day trainings in ESPP for representatives of the Bureau, organised by USAID e-Government Project, Programme on Personnel and Institutional Development, held in Bitola.

As e result of the regular trainings and events related to professional training in the field of public procurement, the Bureau continuously maintains considerable level of administrative capacity for the purpose of timely and quality realisation of the working tasks.

2.4 Carrying out training

Set objective – professional isation and strengthening the professional personnel in the field of public procurement plays an important role in improving the efficiency of the public procurement system. Trainings are the key activity when performing this function, so the Bureau pays great attention to realising this activity, appearing as an initiator, helper and coordinator of trainings in the field of public procurement for both the contracting authorities and the economic operators. However, professional isation and strengthening the capacities of the specialised professional personnel are not limited only to trainings and research of needs for vocational training, but realising this function provides for much broader access and challenge.

Specifically, Article 6 of the modifications and amendments to the Law supplements Article 14 of the Law in terms of expanding the competences of the Bureau when preparing and organising training in public procurement.

This provided for a possibility to strengthen administrative and institutional capacities of both the contracting authorities and the economic operators for proper application of the legal framework, by organising and holding, as much as possible, trainings for the entities obliged to apply the Law, as well as for the economic operators that participate in the contract award procedures.

Modifications and amendments to the Law in the Republic of Macedonia introduce systemic approach of training in public procurement and certification of professionals working in this field. Training is one of the key priorities of the Bureau, since strengthening the capacities of the contracting authorities and the economic operators is recommended by the European Commission in its Country Progress Reports.

Therefore, the Bureau prepared Rulebook on the Programme, the Manner of Carrying Out the Exam, the Amount of the Fee, as well as the Form and the Contents of the Certificate, and it participated in the establishment of the Public Procurement Training Centre, in cooperation with USAID Business Environment Activity and Human and Institutional Development Programme, as well as the Faculty of Law “Justinian the First”. In the second quarter in 2009, the Training Centre commenced operating by implementing the train-the trainer programme.

In cooperation with the USAID funded e-Government Project, total of 31 trainings were held, 24 out of which for the contracting authorities and 7 for the economic operators. The trainings presented both the functionalities and the possibilities offered by the ESPP. 1,909 representatives from different contacting authorities and economic operators attended these trainings.

In the course of 2009, the Bureau organised the following trainings:

- Presentation of contract model when procuring ICT services; The Bureau organised this training in cooperation with the Ministry of Information Society;
- 13 one-day trainings for the contracting authorities on successful usage of ESPP, in cooperation with USAID e-Government Project; 1,151 people attended this training;
- 6 one-day trainings for the economic operators on successful usage of ESPP, in cooperation with USAID e-Government Project; 526 people attended this training;
- Public procurement and team management, organised in cooperation with SouthEast PARTNERS;
- Training for the contracting authorities on the Law on Public Procurement, review procedures and successful usage of the ESPP; Training organised in cooperation with USAID e-Government Project;
- Application of the Law on Public Procurement and tender documents (economic operators); Organised in cooperation with Association of Chambers of Commerce of Macedonia; 47 people attended this training;

- 2 courses on management and leadership in health sector, organised at the request of the Ministry of Health by the Faculty of Medicine;
- Workshop covering public procurement, system of salaries, allowances, remunerations, evaluation of civil servants and public financial control; This workshop was organised by the Association of Financial Workers for the local governments and the public enterprises; 100 people attended this training;
- Training in types of contract award procedures;
- Experience of EU Member States in applying framework agreements, seminar organised in cooperation with SIGMA; 40 people attended this training;
- Training for the contracting authorities on the Law on Public Procurement, review procedures and successful usage of the ESPP;
- Training about Central Purchasing Bodies – EU experience, organised in cooperation with SIGMA;
- 10 one-day trainings for the contracting authorities on the integrated ESPP; More than 154 people attended this training;
- Presentation of the ESPP in Athens, organised by USAID e-Government Project and the Public Procurement Bureau, attended by 50 participants;
- Two-day training for representatives from the Ministry of Internal Affairs, Ministry of Defence, Crisis management Centre and State Appeals Commission, organised by the Bureau and USAID e-Government Project, for 50 participants;
- One-day training in the ESPP for the representatives from the School of Mechanical Engineering, organised by the Bureau and USAID e-Government Project;
- Specialised training for the representatives from the State Lottery of Macedonia Public Enterprise in implementing e-auctions, organised by the Bureau and USAID e-Government Project;
- Specialised training for the representatives from Aerodrom Municipality in implementing e-auctions, organised by the Bureau and USAID e-Government Project, and
- Specialised training for the economic operators – potential participants in auctions, organised by the Bureau and USAID e-Government Project, for 50 participants.

Topics covered at the presentations and the trainings referred to the provisions in the Law on Public Procurement and the bylaws, as well as the good practices in public procurement, to the end of enabling the experts in the field of public procurement to use the ESPP.

2.5 Train-the-Trainer Programme

In the period March-November 2009, first cycle of the Programme for Training and Certification of Trainers in Public Procurement was carried out for the first time in the Republic of Macedonia, organised by the Bureau.

The Bureau devised, commenced and developed the Programme for Training and Certification of Trainers in Public Procurement as a project in cooperation with USAID Business Environment Activity and Human and Institutional Development Programme. The training was held in the premises of the Faculty of Law “Justinian the First” in Skopje.

Reasons due to which this project for training and certification of trainers in public procurement was commenced is the need to fill in the gap in the national system of public procurement related to the shortage of professional personnel, specialised in public procurement, both in the public and the private sector. Main objective of the project, which will continue in future as well, is to establish a network of trainers who will share their gained knowledge with other people through trainings. This will inevitably strengthen the internal administrative potential of the contracting authorities and the economic operators, necessary for quality and efficient response to the challenges when realising public procurement in practice.

Although the need for such programme to train personnel of different profiles in proper and efficient carrying out public procurement was detected long time ago, it could be realised only through the legal basis established. Hence, by adopting the Rulebook on the programme, the manner of carrying out the exam, the amount of the fee, as well as the form and the contents of the certificate, train-the trainer courses, as well as trainings for the contracting authorities and the economic operators, were put in effect in practice.

Activities within the programme were real ised through lectures by lecturers from the Bureau, the Faculty of Law and USAID, covering issues in the field of constitutional and contract law, legal framework for public procurement in the country and the EU, implementation of contract award procedures and application of the remedies system, accompanied by practical examples and application of good international practice in this field.

Lectures were held in two cycles, the first one in the period 9 April 2009 to the beginning of July, and the second one from the first half of September to the beginning of October 2009. The training cycle was successfully completed, the candidates for trainers in public procurement successfully passed the exam and they obtained certificates. Following the completion of the first cycle of train-the-trainer course, 48 trainers in public procurement received certificates.

Main benefit from the successful implementation of the programme is establishment of stable and expert training centre as basis for trained and certified personnel for public procurement, which will operate according to predetermined plan for public procurement training, ensuring high-level professional trainings and education in public procurement.

Taking into account the success achieved in the first cycle of train-the-trainer courses, the Bureau also plans additional such trainings, so as to expand the network of trained trainers in public procurement. Pursuant to the legal provisions, each contracting authority with certain volume of public procurement should have employed persons certified by the Bureau, to be in charge of carrying out contract award procedures.

In parallel to these activities, modern classroom was equipped in the Bureau’s premises, where trainings in public procurement for the contracting authorities and the economic operators will be held, which is the key preconditions for organising quality training programme. The classroom accommodates 25 participants, providing special technical conditions and premises for attending the trainings.

3. Review Procedures in Contract Award Procedures[1]

State Appeals Commission, which replaced the Complaints Commission within the Government of the Republic of Macedonia, was established on 4 November 2008, and started operating on 26 November 2008.

Having in mind that 2009 was the first whole year in which the State Appeals Commission operated, according to the 2009 Annual Report on the Operations of the State Appeals Commission, no comparison in the operations can be made in relation to the previous years.

However, despite the fact that another calendar year passed, remedies system in contract award procedures is new and it is necessary to increase the efforts in the coming period to strengthen the administrative capacities of the State Appeals Commission in the appeal procedures. To that end, it is necessary to adhere to the legal time limit when deciding upon lodged appeal, as well as to provide sufficiently thorough and well-founded explanation according to the presented facts and findings in the appeal procedure in the decisions brought by the State Appeals Commission, so as for the economic operators to clearly understand how and why the Commission brought such decision. This contributes to increasing the confidence of all involved parties in the public procurement system in the country.

This section of the Report presents the received and resolved cases in the contract award procedures in 2009.

In 2009, total of 1,044 cases were lodged to the State Appeals Commission, 996 out of which were resolved, and 48 cases were unresolved due to incomplete documentation.

State Appeals Commission resolved 996 appeal cases out of the 1,044 cases, 960 of which were appeal cases for which the Commission reached decision, while 26 cases were appeal cases in which it only concluded that the first-instance contracting authorities acted themselves, i.e. they applied the competences in Article 221 of the Law on Public Procurement and they corrected the unlawful decisions or actions.

On the basis of the decision reached, this was the structure of the cases:

- refused appeals - 429,
- accepted appeals - 249,
- rejected appeals - 151,
- withdrawn appeals - 105,
- appeals accepted by the contracting authorities – 26.

In 2009, 50 administrative disputes were initiated against the decisions of the State Appeals Commission, as follows:

- 13 lawsuits were accepted,
- 23 lawsuitswere refused,
- 11 lawsuitswere rejected, and
- in 3 cases the lawsuits were stopped.

The Bureau points out to the need to establish mechanism to exchange the judgments and decisions reached by the Administrative Court between the Bureau and the State Appeals Commission, so as for the Bureau to be able to take into account the practice arising from the reached judgments and decisions. This is important since the Bureau carries out number of trainings through which it exchanges experience in practical implementation of the procedures with the contracting authorities and the economic operators.

1 Statistical data are taken from the 2009 Annual Report on Operations of the State Appeals Commission, no. 01-84/1 dated 22 March 2010.

4. Detected Irregularities in Contract Award Procedures when Carrying Out Audit

Pursuant to its legal competences when carrying out audit at entities subject to the State Audit Law ("Official Gazette of the Republic of Macedonia", nos. 65/97, 70/01, 31/03, 73/04, 70/06 and 133/07), in 2009, State Audit Office carried out regular audit of the contract award procedures carried out and public contracts concluded in the course of 2008 and 2009.

Detected irregularities during the audit carried out are classified in several groups, as follows:

- contract award procedures not being carried out;
- execution of public contracts. This was analysed from the point of view of exceeding the agreed value in the public contract above the offered one.
- absence of internal procedures and mechanisms through which the contracting authority will monitor contract execution;
- weaknesses in the stage of execution of concluded contracts;
- tender evaluation stage and providing proposal for selection of the most favourable tenderer;
- adopting decision for selection of the most favorable tenderer; Inconsistencies refer to improper application of the methodology for expressing contract award criteria into points;
- preparation of final ranking lists;
- irregularities when adopting the public procurement plan, absence of legal prescribed elements;
- preparation of public contracts, and contracts not containing compulsory legal elements are concluded;
- including requirements in the contracts contrary to the requirements in the tender documents and the tender of the most favourable tenderer;
    - preparation of tender documents that not always ensure fully correct and precise information for the procedure or it does not contain the compulsory elements, and
    - practice of the contracting authorities not to adopt decision on public procurement or to adopt decisions that do not contain the compulsory elements prescribed in the Law.

5. Statistical Data on Carried Out Procedures and Concluded Contracts

5.1 Analysis of statistical data on carried out procedures and concluded contracts

Public Procurement Bureau processes and analyses data on public procurement and prepares annual report on regular basis and, when needed, quarterly and monthly reports in the field of public procurement. Below is a detailed review of public procurement market in the Republic of Macedonia in 2009. Data are categor ised by different parameters and types, so as to better observe the developments in the field of public procurement, the financial trends and the implications of public consumption by the contracting authorities.

Subject to analysis of data in this Report are all contract award notices, design contests and all public contracts concluded in the respective period.

All gathered data are analysed by applying the new module on monitoring and statistical review of trends in public procurement, implemented in the integrated electronic system for public procurement. By starting applying the integrated electronic system for public procurement, the Bureau manages considerable database and is able to prepare detailed analyses of the public procurement market in the Republic of Macedonia. Database for the developments, trends and parameters in the field of public procurement is one of a kind in the Republic of Macedonia and it reflects overall actual developments in the field of public procurement in the country. Data on public procurement in 2009 give most realistic picture of the volume of public procurement in relation to the volume in the previous years, since now, as a result of the setup of the system for contract and contract award notices, and the obligation of the contracting authorities to use it, database has been established, covering all contracting authorities and their public procurement procedures.

5.2 General and comparative data on concluded public contracts

Data in the Electronic System for Public Procurement (hereinafter: ESPP) shows that total of 22,789 public contracts were concluded in 2009, in the total amount of Denar 47,713,142,188 (including VAT). Value of public procurement in the country in 2009 accounted for 12% of GDP of the Republic of Macedonia.

According to the data available to the Bureau, value of concluded contracts in 2009, compared to the previous several years, was at the highest level, accounting for an increase of even 73% compared to the previous year. As for the number of concluded contracts, it remained unchanged (22,053 contracts concluded last year). If one analyses these data, one can see that insignificant increase of the number of concluded contracts is evident on one side, and there is still high increase of the total value of the concluded contracts on the other. However, such increase is due to several multi-year contracts, i.e. capital investments of the Government of the Republic of Macedonia, with high single values (around Denar 10 billion accounts for the four biggest contracts), and they are presented in more details below.

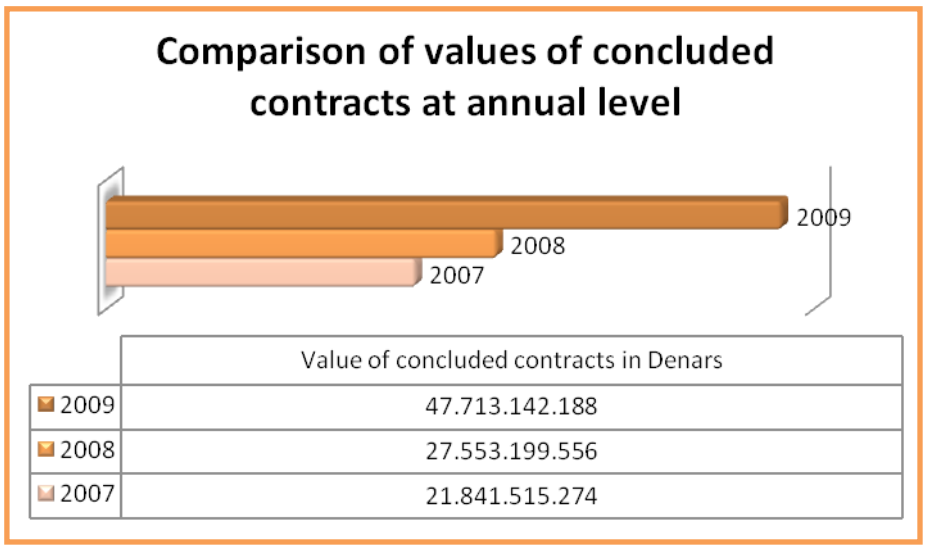
Table 1 and Chart 1 give comparative review of the following: the number and the value of concluded public contracts in the last 3 years, the Budget of the Republic of Macedonia and GDP percentage.

Table 1

Year	Budget of the Republic of Macedonia (Denar million)	GDP (Denar million)	Value of concluded contracts (Denar million)	Value of public procurement as % of GDP
2007	108,634	353,786	21,842	6%
2008	128,740	398,640	27,553	7%
2009	149,594	406,651	47,713	12%

*Data on economic indicators are taken from the website of the Ministry of Finance – Macroeconomic Policy Department and Budget Department.

Chart 1



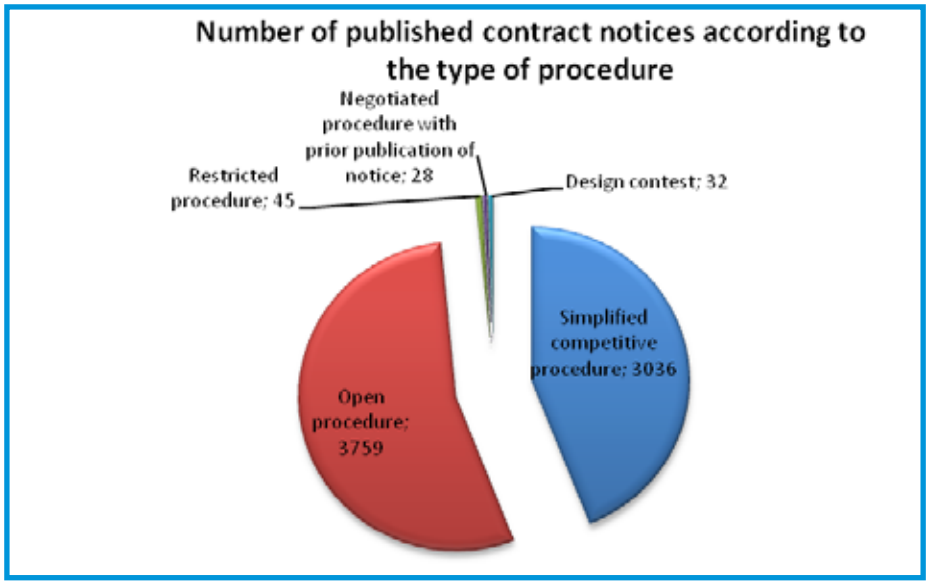
5.3 Data from contract award notices

In 2009, 6,900 contract award notices were published, 3,036 out of which were notices for simplified competitive procedure, 3,759 were notices for open procedure, 45 were notices for restricted procedure, 28 were notices for negotiated procedure with prior publication of a contract notice and 32 were notices for design contest. Table 2 and Chart 2 show the number of published contract notices according to the type of the procedure.

Table 2

Type of procedure	Number of contract notices
Simplified competitive procedure	3,036
Open procedure	3,759
Restricted procedure	45
Negotiated procedure with prior publication of a contract notice	28
Design contest	32
Total	6,900

Chart 2



Above-listed data lead to the conclusion that most contract award notices in 2009 were published by applying the open procedure – 3,759 and the simplified competitive procedure – 3,036. This points out to the fact that contracting authorities use the open procedure as one of the most transparent procedures, and they often use the simplified competitive procedure with publication of a notice for supplies and services up to EUR 20,000 and works up to EUR 50,000 in Denar equivalent, excluding VAT, which in fact is simplified open procedure. As for 2008, total of 6,867 contract award notices were published, and it can be concluded that no significant increase in the number of published contract notices is evident. In addition, it can also be concluded that, compared to last year, there were no significant differences in the tyoe of carried out contract award procedures. Slight reduction in the number of published contract award notices was registered when applying the open procedure (3,961 last year), while the number of published notices by applying the simplified competitive procedure increased (2,790 last year). Number of published contract notices for the other procedures, compared to 2008, was approximately the same.

Contracting authorities published total of 134 contract notices in the category “Other Notices”, i.e. contract award notices for so-called “non-priority” services pursuant to indent 2, paragraph 1, Article 17 of the Law, such as services related to temporary employment, hotel, catering, recreational, cultural, legal and other services. Electronic system for public procurement provides for these contract notices to be published to the end of ensuring greater transparency and equal treatment of the economic operators.

As for the type of the subject-matter of the public contract, most contract award notices were published for procurement of supplies - 3,807, for services - 1,928 and for works – 1,165. Number of published contract award notices according to the type of public contract is shown in Table 3 and Chart 3. Trend of publishing supplies contract notices, compared to 2008, was approximately the same, while differences were notices when publishing services contract notices (an increase in 2008) and works (a decline in 2009). Comparative data are presented in Chart 4.

Table 3

Type of public contract	Number of contract notices
Supplies	3,807
Services	1,928
Works	1,165
Total	6,900

Chart 3

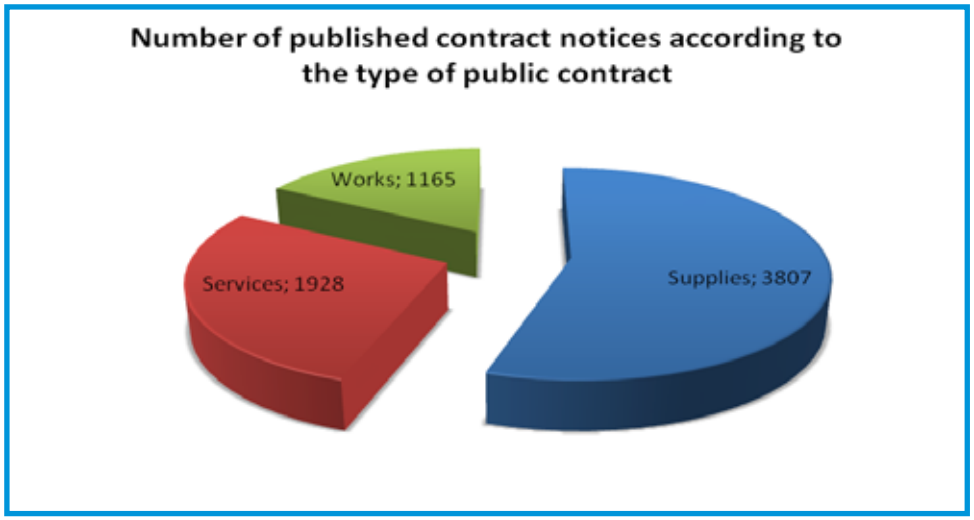
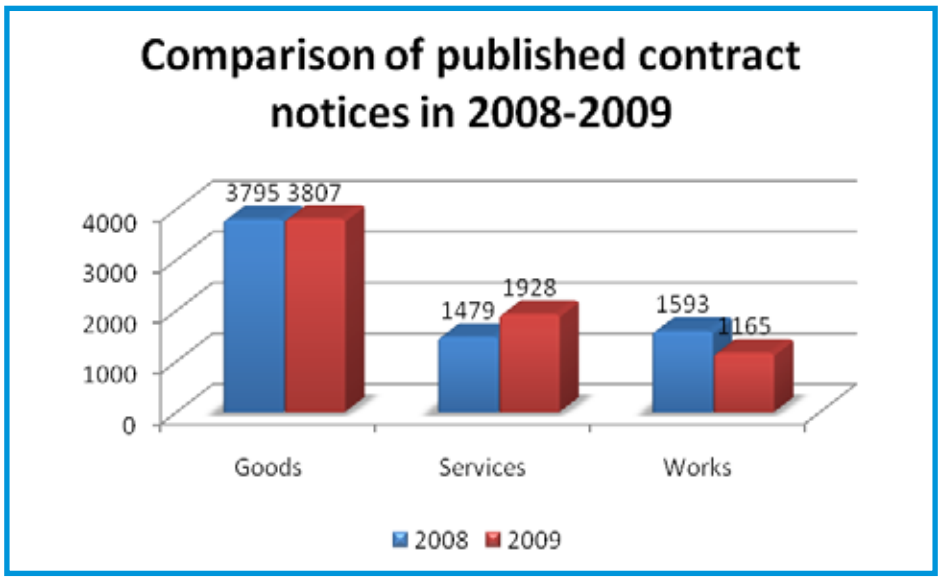


Chart 4



Next few tables show detailed data on published contract award notices according to the type of contract and the way of its execution. Tables 4, 5 and 6

Table 4

Type of public contract- supplies	Number of contract notices
Purchasing	1,658
Hire purchase	2,123
Lease, with an option to purchase supplies	2
Lease, without an option to purchase supplies	6
Combination of above-mentioned types	18
Total	3,807

Table 5

Type of public contract - services	Number of contract notices
Architectural and engineering services	438
Auxiliary transport services	7
Other services	44
Health and social services	14
Publishing and printing services	89
IT and related services	55
Investigative and security services	17
Education and vocational education services	3
Legal services	6
Advertising services	28
Recreational, cultural and sporting services	3
Accounting, auditing and bookkeeping services	26
Management consulting services	21
Telecommunication services	134
Air transport services of passengers and freight	37
Land and air transport services of mail	4
Land transport services	212
Maintenance and repair services	451
Sewage and refuse disposal services	46
Temporary employment services	62
Development and research services	49
Building cleaning services and property management services	28
Rail transport services	1
Financial services	135
Hotel and catering services	18
Total	1,928

Table 6

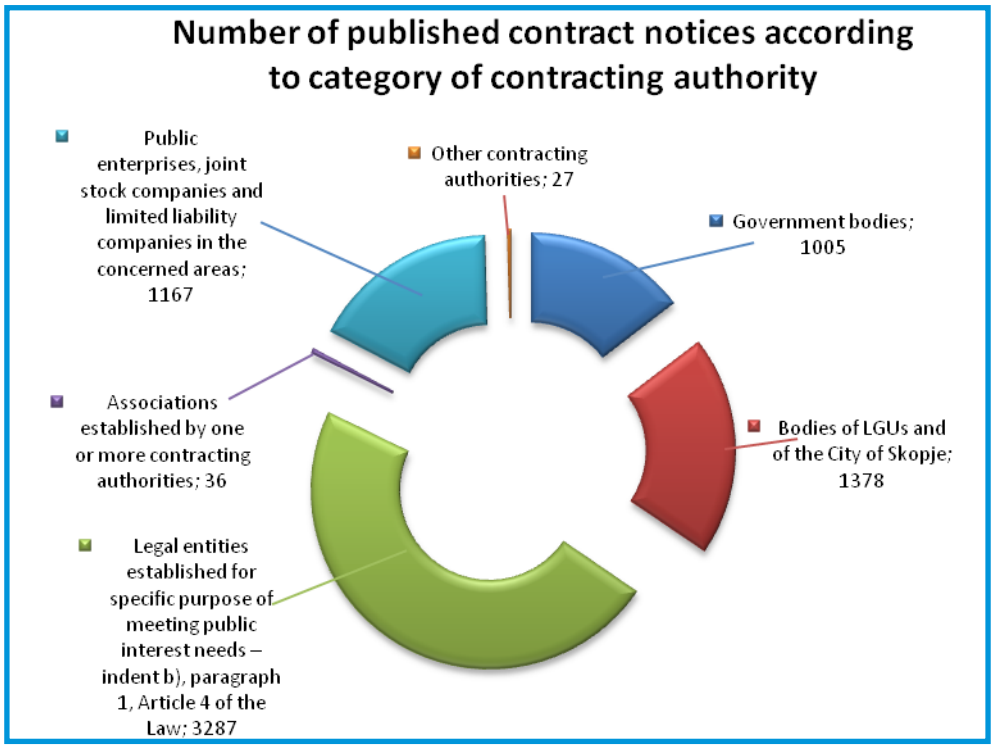
Type of public contract - works	Number of contract notices
Execution	1,020
Design and execution	35
Realisation, by any means	110
Total	1,165

Total number of published contract award notices according to category of contracting authorities, pursuant to Article 4 of the Law on Public Procurement and the Decision on Determining the Indicative List ("Official Gazette of the Republic of Macedonia", nos. 159/07 and 74/09) is shown in Table 7 and Chart 5.

Table 7

Category of contracting authority	Number of contract notices
State bodies	1,005
Bodies of local government units and of the city of Skopje	1,378
Legal entities established for specific purpose of meeting public interest needs –indent b), paragraph 1, Article 4 of the Law	3,287
Associations established by one or more contracting authorities	36
Public enterprises, joint stock companies and limited liability companies in the concerned areas	1,167
Other contracting authorities	27
Total	6,900

Chart 5



When analysing the data on the published contract award notices according to category of contracting authority, it can be seen that most contract notices were published by contracting authorities in the category legal entities established for specific purpose of meeting public interest needs - indent b), paragraph 1, Article 4 of the Law – 3,287 and by contracting authorities in the category bodies of local government units and of the city of Skopje – 1,378.

As regards the shortening of time limits, in 2009, contracting authorities published total of 201 procedures with shortened time limits. Shortening of time limits, according to the type of the procedure, can be applied: if the contracting authority published prior information notice, published all tender documents on the website or due to urgent needs.

Total of 740 contract notices envisaging conclusion of framework agreement, as a special way of awarding public contract.

When data from contract notices are analysed, as regards the type of contract award criteria the contracting authorities applied in the carried procedures, it can be determined that the criterion for economically most advantageous tender was far more used compared to the lowest price criterion.

Table 8 shows data on the number of published contract notices according to the contract award criterion applied in the procedure. It is necessary to point out that the data do not include contract notice for restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue, since the criterion is most often not published in the contract notice, but it is rather included in the tender documents for the next stage of the procedure.

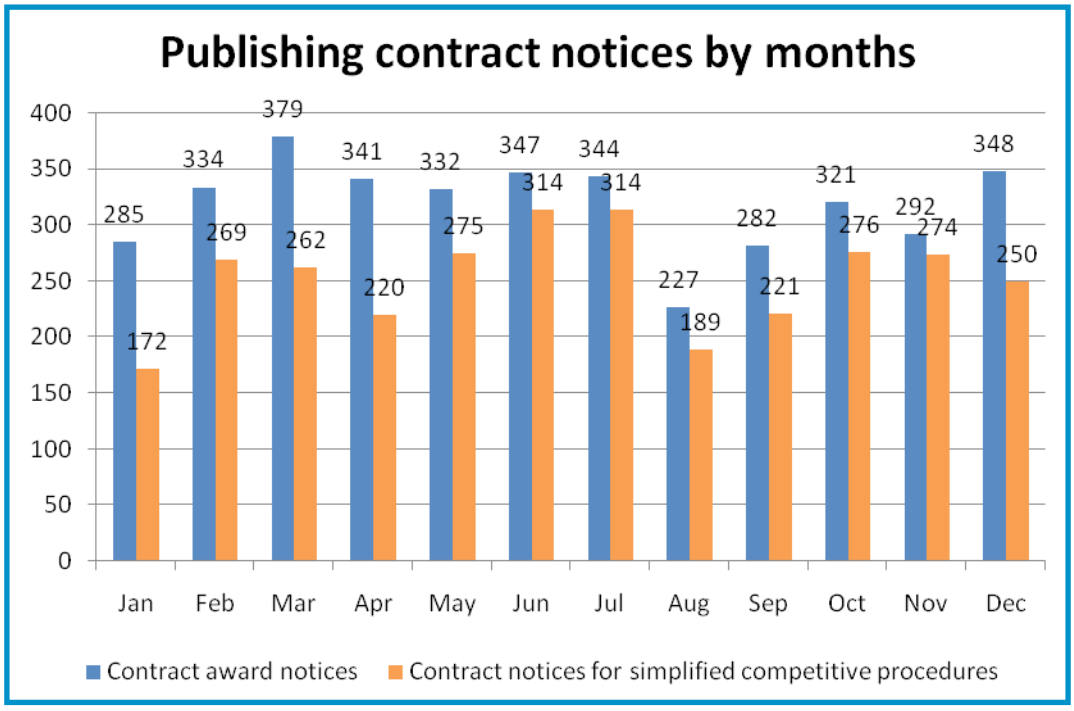
Table 8

Contract award criteron	Number of contract notices
Lowest price	1,764
Economically most advantageous tender	5,031

It can be concluded that in 26% of the published contract notices, the contracting authorities applied the criterion – lowest price. Compared to 2008 (when such percentage was 15%), increased use of the criterion – lowest prices was evident.

Chart 6 shows the dynamics of publishing contract notices by month. The Chart shows that most contract notices were published at the beginning of the year in February, March and April, while in mid-2009 publishing contract notices declined, to increase at the end of the year Such dynamics was mostly due to the fact that contracting authorities commence public procurement procedures at the beginning, i.e. at the end of the year.

Chart 6



5.4 Competitiveness at contract award procedures

Average number of submitted tenders per contract can be seen as competitiveness indicator, one of the main principles when awarding public contracts. Tables 6 and 7 give summary of submitted tenders per contract by type of procedure and by type of subject-matter of the contract.

Table 9

Type of procedure	Average number of tenders per contract
Simplified competitive procedure with publication of a notice	4
Open procedure	6
Restricted procedure	7
Negotiated procedure with prior publication of a contract notice	5
Negotiated procedure without prior publication of a contract notice	2
Awarding public services contract for service category 17-27, with estimated value less than EUR 20.000	1
Awarding public services contract for service category 17-27, with estimated value above EUR 20.000	3

Table 10

Subject-matter of the public contract	Average number of tenders per contract
Supplies	5
Services	3
Works	4

Above-listed data lead to the conclusion that level of competition increased compared to 2008. In fact, with respect to the open procedure, 6 acceptable tenders were submitted per public contract (in 2008, the average was 5 tenders). Such average number of submitted tenders per public contract is expected, since open procedure (accounting for 69% of the value of public procurements), compared to other procedures, provides for the biggest competition. Increase of competition was evident at restricted procedure as well, where average number of submitted tenders was 7 (in 2008, average was 3 tenders), being bigger than the average when applying the open procedure. However, these data cannot be considered as main parameter, having in mind the small number of contracts concluded by applying the open procedure (37). When compared, high level of competition was achieved at the negotiated procedure with prior publication of a notice – in average, 5 submitted tenders (compared to 2008, when 2 tenders were submitted). In average, small number of tenders was submitted by applying the negotiated procedure without prior publication of a notice – 2, due to the specific subject-matter of procurement by applying this procedure (monopoly position on the market, additional deliveries, etc.)

5.5 Concluded public contracts

This section of the Report presents data, and analysis is made of the public contracts concluded in 2009 on the basis of different parameters. For the purpose of greater clarity of data, this Chapter is divided in several sections on the basis of the parameters considered. Data mainly refer to the total number of concluded public contracts and their value, however, with respect to some parameters, due to ESPP setup (depending on whether data are received from contract award notices or from the records on simplified competitive procedures), data are grouped and refer only to the procedures – open procedure, restricted procedure, negotiated procedure with and without prior publication of a notice, competitive dialogue and awarding of public services contract pursuant to indent 2, Article 17, exceeding EUR 20,000 in Denar equivalent, excluding VAT. These tables and charts are indicated below. All data regarding concluded public contracts are published on Bureau's website https://e-nabavki.gov.mk and are fully available to the public.

Table 11 and Chart 7 show the number and the value of concluded public contracts in 2009 according to the type of contract award procedure. According to the value of concluded contracts, most applied was the open procedure, on the basis of which 6,909 contracts were concluded in the amount of Denar 32,912,270,052 – 69% of the total value of public procurement in Macedonia. Restricted procedure was the second most applied procedure, on the basis of which 37 contracts were concluded in the amount of Denar 7,750,007,556. Other procedures were much less applied (all together around 15% of the total value of public procurement).

Chart 7

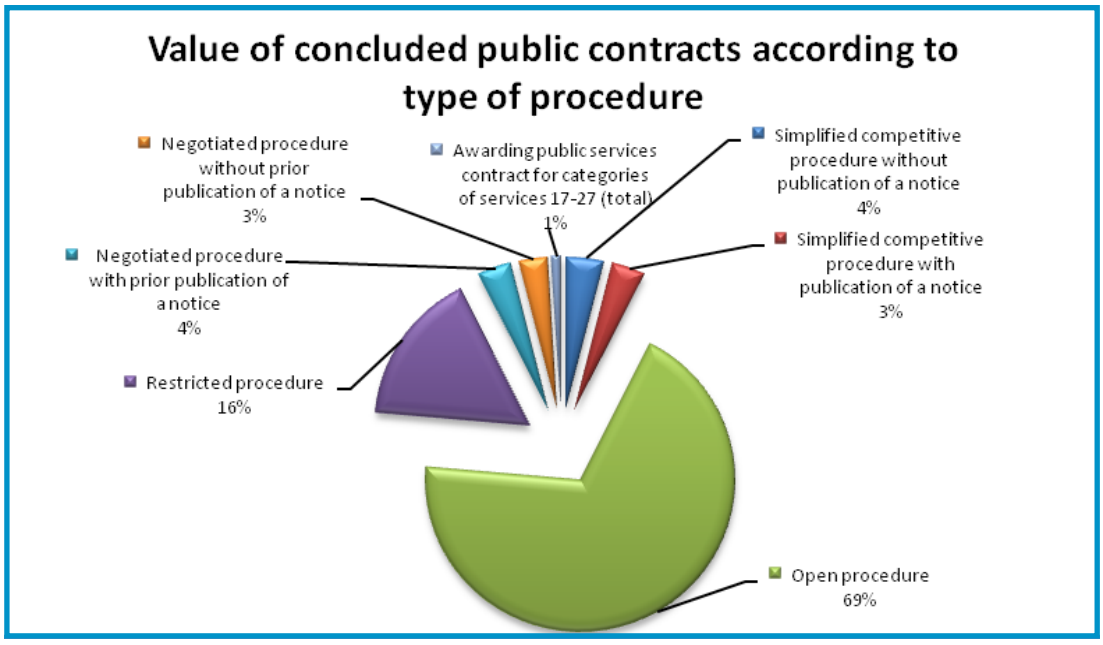
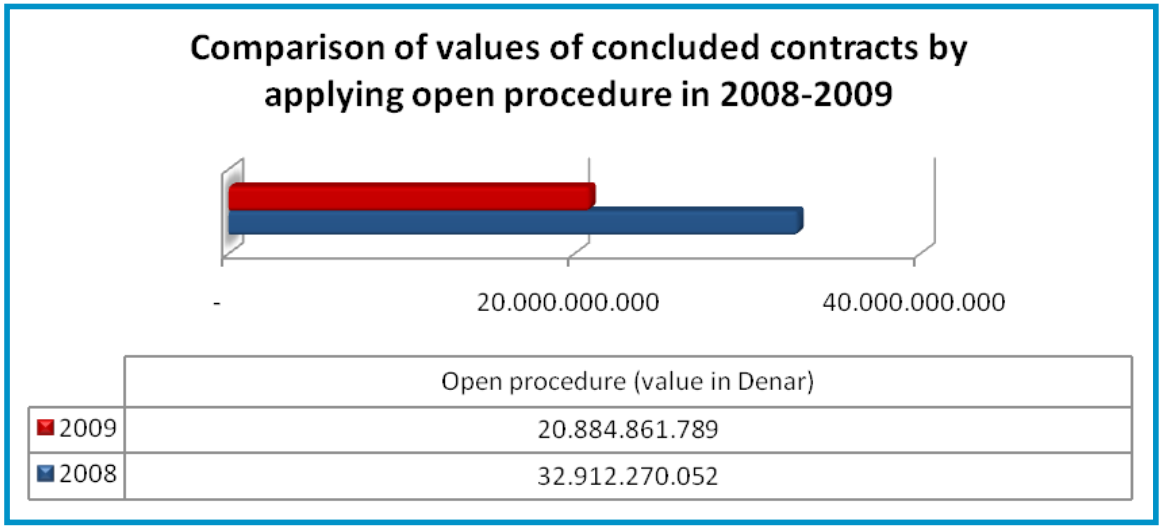


Table 11

Type of contract award procedure	Number of concluded contracts	Value of concluded contracts
Simplified competitive procedure without publication of a notice	10,885	Denar 1,849,206,134
Simplified competitive procedure with publication of a notice	2,706	Denar 1,674,338,625
Open procedure	6,909	Denar 32,912,270,052
Restricted procedure	37	Denar 7,750,007,556
Negotiated procedure with prior publication of a contract notice	75	Denar 1,679,366,662
Negotiated procedure without prior publication of a contract notice	865	Denar 1,410,354,092
Awarding public services contract for service category 17-27 (total)	1,312	Denar 437,599,067
Total	22,789	Denar 47,713,142,188

Aforementioned data show evident difference in the trend of using the procedures compared to 2008, i.e. difference in the number of concluded contracts and their values. In fact, compared to 2008, when most of the concluded contracts by number and by value were by applying the open procedure and simplified competitive procedures without publication of a notice, in 2009, multi-fold increase of the value of concluded contracts by applying the restricted procedure was seen. It was due to the fact that this procedure was used for awarding largest contracts by value – capital investment projects. Application of other procedures was approximately the same in terms of value of concluded contracts, however, significant increase was registered in applying both the open and the restricted procedure. Comparative data are presented in Charts 8 and 9.

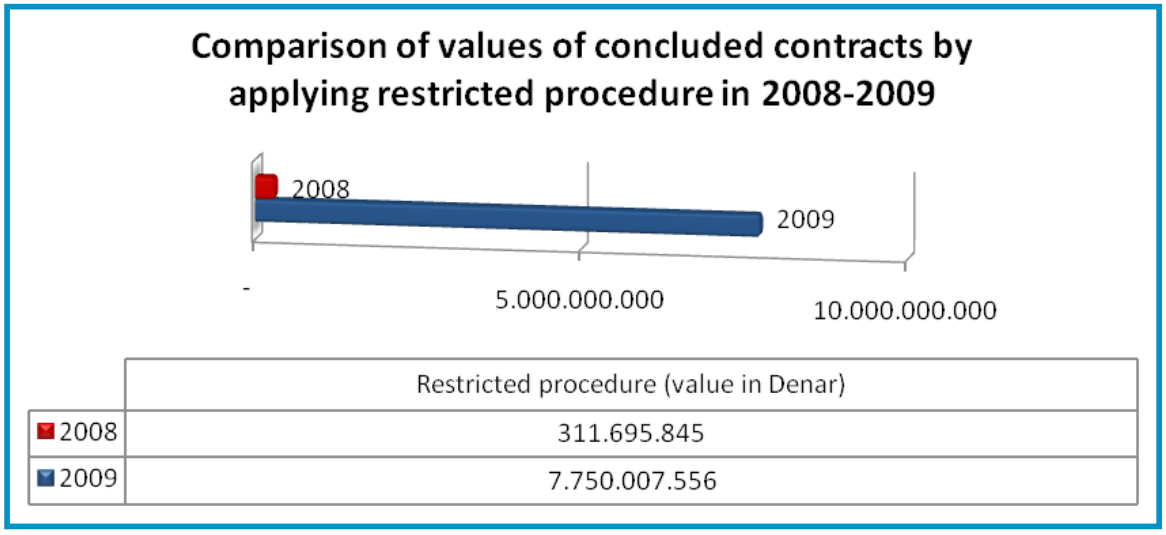
Chart 8



Value of concluded contracts on the basis of open procedure increased by 58% in relation to 2008, while with respect to the restricted procedure, the increase was multi-fold. With respect to the value of concluded contracts, as mentioned above, no significant changes were noticed in relation to 2008 when applying other procedures, while there was a drop in their share in the total value of concluded contracts, in particular the following: negotiated procedure without publication of a notice - 3% (5% share in 2008), simplified competitive procedures without publication of a notice - 4% (7%

share in 2008) and simplified competitive procedure with publication of a notice – 3% (6%share in 2008).

Chart 9



	Restricted procedure (value in Denar)
2008	311.695.845
2009	7.750.007.556

5.6 Data on contracts concluded according to the type of public contract

According to the subject-matter of the public contract, total of 13,071 supply contracts (in the amount of Denar 18,608,935,319), 7,410 services contracts (in the amount of Denar 4,874,673,071.24) and 728 works contracts (in the amount of Denar 5,942,947,036.91) were concluded in 2009. Chart 10 and Tables 12, 13, 14 and 15 present more detailed data on the number and value of concluded public contracts according to the type of the subject-matter of the contracts. Table 12 shows data on total public contracts, while other three tables present data exclusively on contracts concluded by applying open procedure, restricted procedures, negotiated procedure with and without prior publication of a contract notice and competitive dialogue. Such presentation of data is due to the system setup and the manner of gathering data (contract award notice).

Table 12

Type of public contract	Number of concluded contracts	Value of concluded contracts
Supplies	13,071	Denar 18,608,935,319
Services	7,410	Denar 8,971,979,783
Works	2,308	Denar 20,132,227,086
Total	22,789	Denar 47,713,142,188

Chart 10

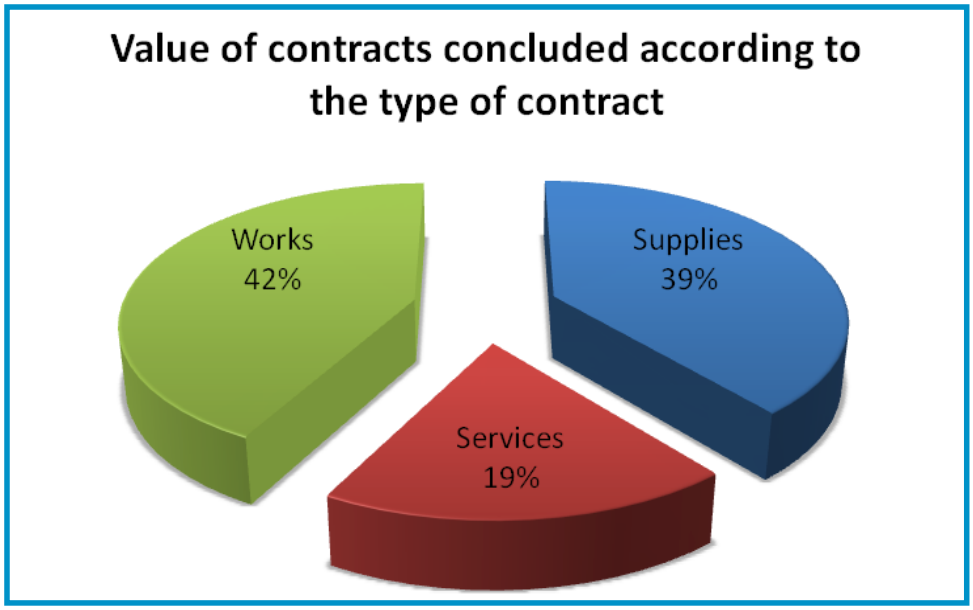


Table 13

Type of public contract- supplies	Number of concluded contracts	Value of concluded contracts
Purchasing	1,611	Denar 9,255,472,021
Hire purchase	3,823	Denar 7,600,626,328
Lease, with an option to purchase supplies	3	Denar 42,842,699
Lease, without an option to purchase supplies	1	Denar 2,200,000
Combination of the above-mentioned types	6	Denar 18,485,982
Total	5,444	Denar 16,919,627,030

*Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, or public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

Table 14

Type of public contract - works	Number of concluded contracts	Value of concluded contracts
Execution	580	Denar 18,536,249,280
Design and execution	22	Denar 645,009,320
Realisation, by any means	40	Denar 96,030,151
Total	642	Denar 19,277,288,751

*Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, or public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

Tables show that most (42%) of the value of public contracts accounted for procurement of works, and it was most often works contracts. These data show that there was a big change in the structure of the value of contracts concluded according to the type of contract in 2009. In fact, value of concluded public works contracts significantly increased compared to 2008, when share of works in the total volume of public procurement was 25%. This was due to several high-value contracts concluded for procurement of works in 2009. As for public supplies contracts (39% of the total value of public procurements), share they had in the total volume of public procurement significantly declined

in relation to 2008 (55% in 2008). Public supplies contracts were most often real ised through hire purchase. Public services contracts participated with 19% in the total value of public procurement in 2009. Their structure shows different percentage of categories of services pursuant to the Decree on services subject-matter of public services contracts ("Official Gazette of the Republic of Macedonia", no. 157/07).

Table 15

Type of public contract - services	Number of concluded contracts	Value of concluded contracts
Architectural and engineering services	192	Denar 2,968,764,205
Auxiliary transport services	7	Denar 27,238,239
Other services	71	Denar 529,016,202
Health and social services	24	Denar 12,539,688
Publishing and printing services	52	Denar 130,361,177
IT and related services	59	Denar 83,966,588
Investigative and security services	16	Denar 29,737,351
Education and vocational education services	8	Denar 11,085,974
Legal services	1	Denar 1,800,000
Advertising services	62	Denar 469,168,940
Recreational, cultural and sporting services	12	Denar 7,052,622
Accounting, auditing and bookkeeping services	14	Denar 31,352,525
Management consulting services	9	Denar 139,424,285
Telecommunication services	40	Denar 129,346,071
Air transport services of passengers and freight	15	Denar 30,682,829
Land transport services	673	Denar 1,078,061,133
Maintenance and repair services	393	Denar 1,027,909,103
Sewage and refuse disposal services	24	Denar 70,123,390
Temporary employment services	64	Denar 470,537,864
Development and research services	37	Denar 270,665,549
Building cleaning services and property management services	13	Denar 13,053,494
Rail transport services	6	Denar 89,528,082
Financial services	73	Denar 207,685,282
Hotel and catering services	14	Denar 29,140,443
Total	1,879	Denar 7,858,241,036

*Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, or public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

5.7 Data on contracts concluded according to the category of contracting authority

Number and value of contracts concluded according to the category of contracting authority and its main business activity are shown in Table 16 and Chart 11. Due to ESPP setup and the manner of gathering data, and according to the category of contracting authority, information given below were obtained from the contract award notices and refer exclusively to contracts concluded by applying open procedure, restricted procedures, negotiated procedure with and without prior publication of a contract notice and competitive dialogue.

Chart 11

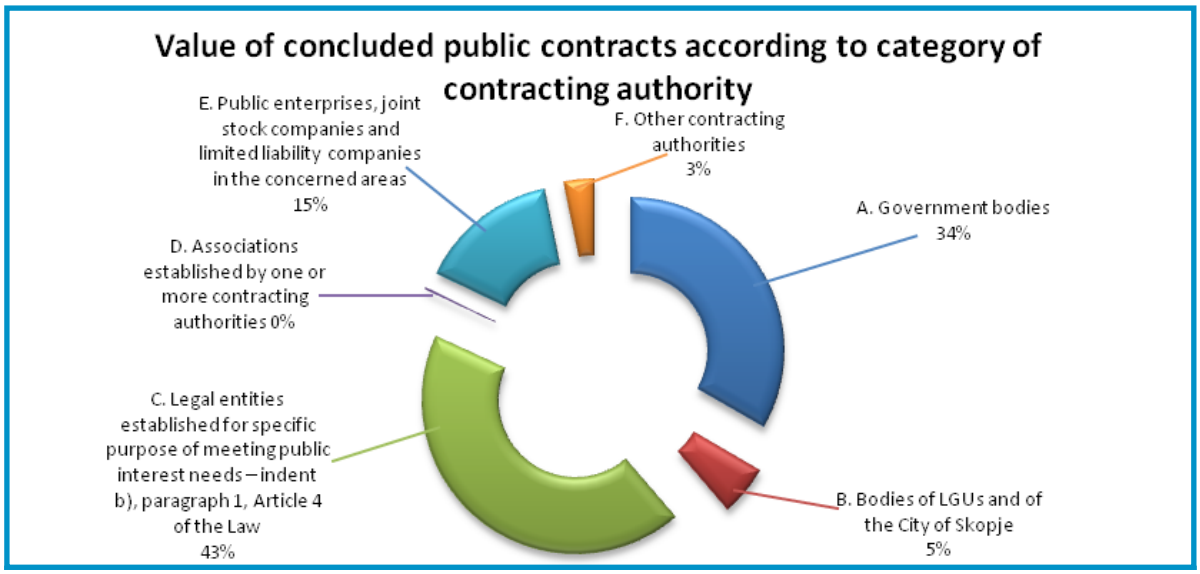


Table 16

Category of contracting authority	Main business activity	Number of contracts	Value of concluded contracts (Denar)
A. State bodies	General public services	442	6,179,515,475
	Defence	351	851,427,558
	Public order and security	50	4,677,971,122
	Environment	17	235,437,327
	Health	22	718,507,451
	Economy and finance	69	245,955,009
	Social protection	15	10,795,700
	Sports and culture	42	1,550,543,813
	Education	79	218,993,965
	Total A.	1,087	14,689,147,420
B. Bodies of local government units and of the city of Skopje	General public services	637	2,340,567,727
	Sports and culture	5	12,098,731
	Total B.	642	2,352,666,458
C. Legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law	General public services	1,335	6,771,835,883
	Public order and security	43	53,998,252
	Environment	43	91,636,523
	Health	2,811	5,074,946,185
	Housing, construction and transport	57	5,105,931,401
	Social protection	361	399,683,866
	Sports and culture	27	129,113,539
	Education	680	1,200,803,180
	Other	33	186,987,632
	Total B.	5,390	19,014,936,461
D. Associations established by one or more contracting authorities	General public services	7	27,642,928
	Education	47	73,984,390
	Other	1	3,548,214
	Total D.	55	105,175,532
E. Public enterprises, joint stock companies and limited liability companies in the concerned areas	General public services	169	592,797,196
	Housing, construction and transport	6	4,146,683
	Economy and finance	4	5,341,237
	Other	581	5,869,359,006
	Total E.	760	6,471,644,122
F. Other contracting authorities	Other	32	1,421,586,824
	Total F.	32	1,421,586,824
Total		7,966	44,055,156,817

*Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, or public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

The table shows detailed review of real ised public procurements according to category and main business activity of the contracting authorities. It can be concluded that most (43%) accounts for the category of legal entities established for specific purpose of meeting public interest needs -indent b), paragraph 4, Article 43% of the Law, in particular the following: health and general public

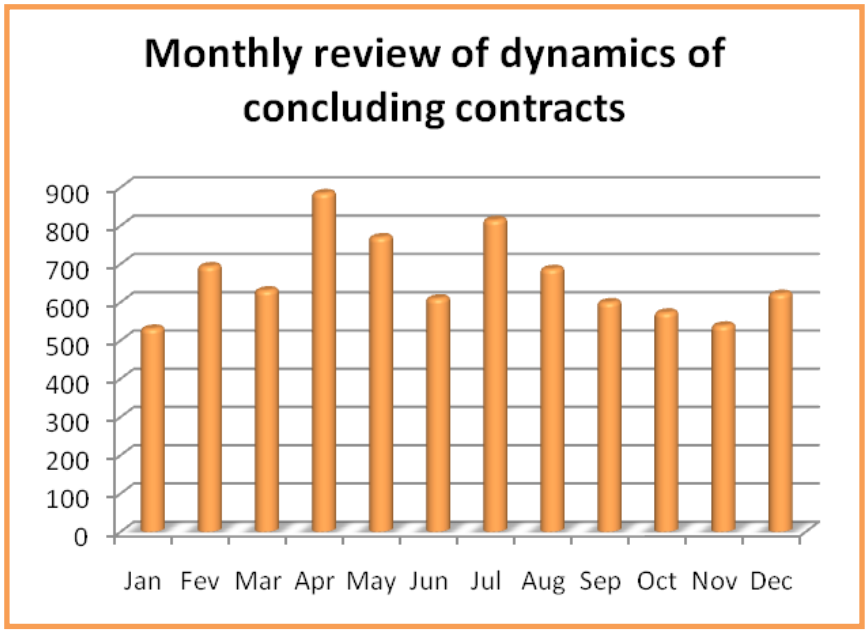
services. This was a result of the fact that this category includes all health institutions, hospitals, schools, kindergartens, part of utility enterprises and other legal entities performing activities of public interest. In fact, this category covers most of the contracting authorities (see Decision on Determining the Indicative List of Contracting Authorities).

Second, according to real ised public procurements, was the category of contracting authorities - state bodies, accounting for 34% of the value of public procurement. Other categories participated with around 23% all together in the total value of public contracts.

5.8 Data on public contracts concluded according to different parameters

When analyzing the dynamics of awarding contracts by months in 2009 (Chart 12), it can be seen that most of the contracts were concluded in the period April-May. It was due to the fact that contracting authorities commenced most of their procedures in the first half of the year and, taking into account the time necessary to realise the procedure up to contract award, it was expected for most of the contracts to be concluded in the middle of the year.

Chart 12

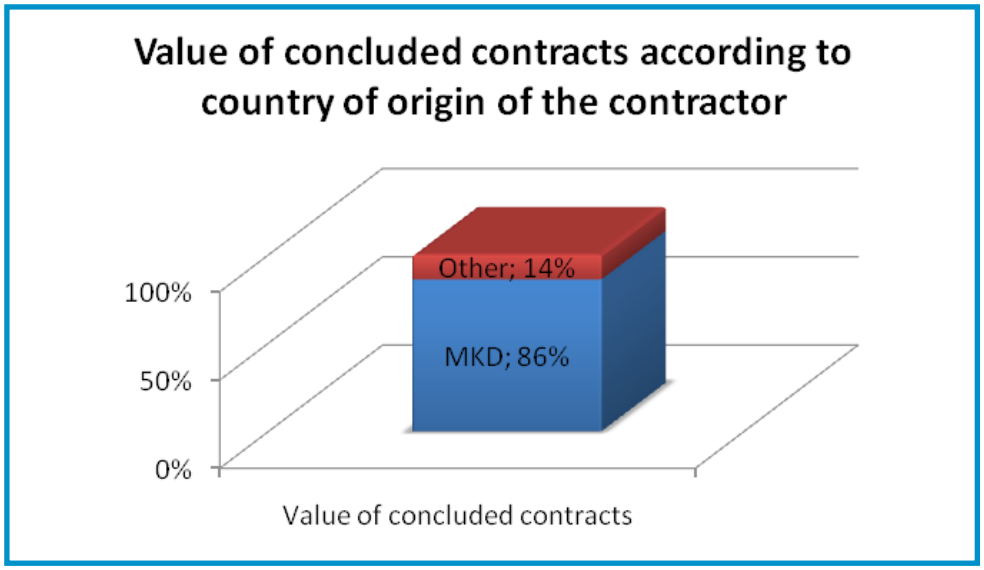


International tender was carried out for 145 of the public contracts (Denar 6,168,765,158). Analysed by country of origin of the contractor, data are give in Table 17 and Chart 12-a.

Table 17

Country of origin of the contractor	Number of concluded contracts	Value of concluded contracts
Macedonia	7820	Denar 37,886,391,659
EU	84	Denar 2,990,720,358
Other	61	Denar 3,178,044,800

Chart 12-a

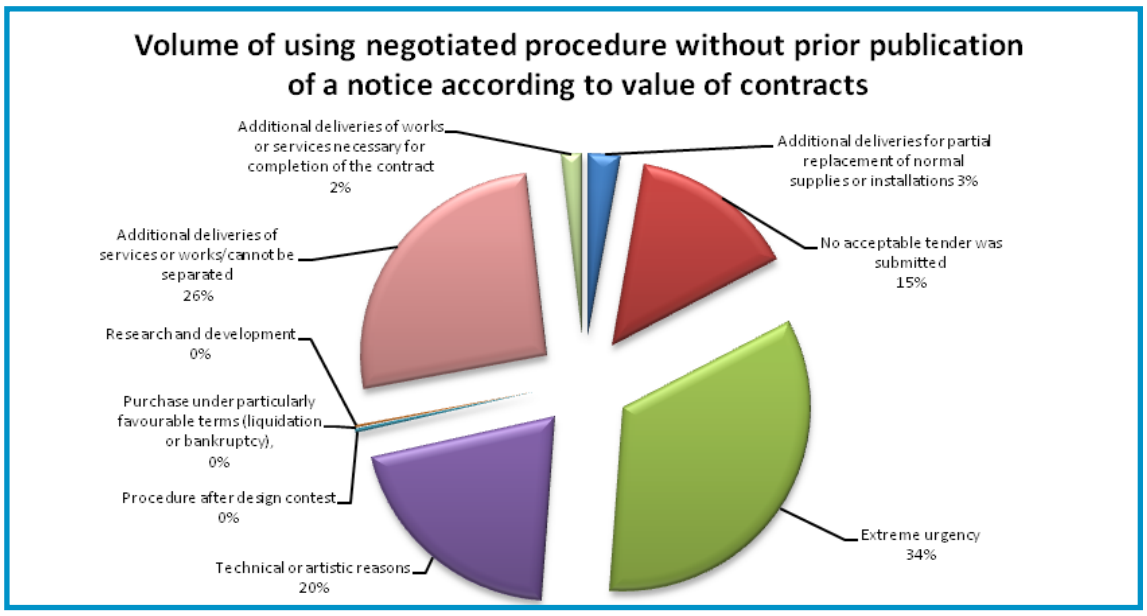


Above-stated data lead to the conclusion that national companies accounted for 86% of the value of awarded public contracts on the public procurement market in the Republic of Macedonia. However, compared to 2008, share of foreign companies as contractors in public contracts significantly increased. In 2009, they accounted for 14%, while in 2008, they participated with 5% in the total value of concluded contracts.

In addition, it is worth mentioning that 478 framework agreements and 271 agreements for joint contract award procedure were concluded in 2009.

At the beginning of this Chapter we presented the number and the value of contracts concluded according to the type of procedure, whereby negotiated procedure with and without prior publication of a notice participated with 4% and 3% respectively. Table 18 and Chart 14 show the number and the value of concluded public contracts by applying these procedures on the basis of the reason for applying/legal basis for applying these procedures.

Chart 13



Data on negotiated procedure can lead to a conclusion that most often (34% of the value of awarded contracts under negotiated procedure without prior publication of a notice) reason/legal justification to apply the negotiated procedure without prior publication of a notice is indent 3, point 1), paragraph (1), Article 99 of the Law, when due to reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission, the time limits for open procedure,

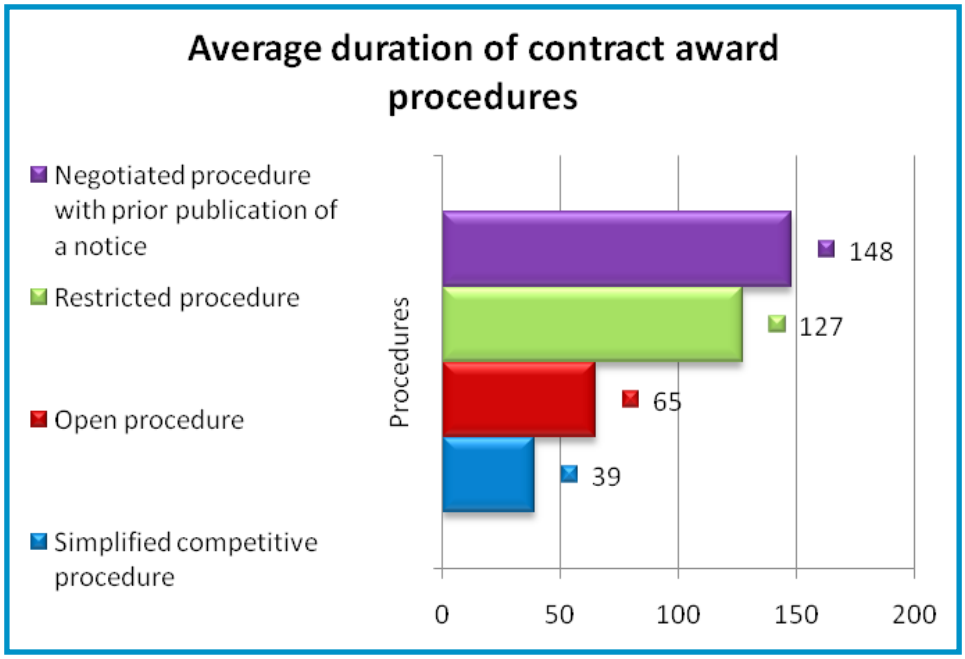
restricted procedure, simplified competitive procedures or negotiated procedure with prior publication of a contract notice cannot be complied with - 203 contracts were concluded in the amount of Denar 478,239,508. Another reason for applying the negotiated procedure without prior publication of a contract notice (20%) was due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract may be executed only by a particular economic operator.

Table 18

Type of procedure	Justification for selection of a procedure	Number of concluded contracts	Value of concluded contracts
A. Negotiated procedure with prior publication of a contract notice	If no acceptable tender has been received in open procedure, restricted procedure or competitive dialogue	2	Denar 11,021,719
	in exceptional cases, when the nature of the works, supplies or services, or the risks attached thereto, do not allow a prior overall pricing of the contract	31	Denar 1,400,735,044
	contracting authority invites to negotiations all economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure have proven their qualifications	33	Denar 40,145,415
	for public services contract, where the service to be purchased is of such nature, that the technical specifications cannot be elaborated with sufficient precision to permit the awarding of the contract by applying rules governing open or restricted procedures	9	Denar 227,464,484
	Total A.	75	Denar 1,679,366,662
B. Negotiated procedure without prior publication of a contract notice	in the case when the contracting authority has to procure additional deliveries from the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations	45	Denar 38,568,502
	when no tender in an open procedure or no request to participate has been submitted	180	Denar 204,477,537
	when due to reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission	203	Denar 478,239,508
	when due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract may be executed only by a particular economic operator	284	Denar 286,392,846
	when the contract concerned follows a design contest and is awarded to the wining candidate or to one of the wining candidates	1	Denar 4,900,000
	for purchase of supplies under particularly favorable terms, from supplier which winds-up its business activities (liquidation or bankruptcy)	1	Denar 3,068,000
	when the products involved are manufactured purely for the purpose of research, experimentation, study or development	1	Denar 297,700
	such additional works or services cannot be technically or economically separated from the original contract without major inconvenience for the contracting authority	124	Denar 369,284,209
	such works or services, although separable from the performance of the original contract, are strictly necessary for its completion	26	Denar 25,125,790
	Total B.	1015	Denar 1,410,354,092

Data that can serve to present efficiency of contract award procedures are average duration of the procedures from the public tender opening to concluding the contract. Gathered data point out to the conclusion that average duration of simplified competitive procedure with publication of a notice was 39 days, open procedure – 65 days, restricted procedure – 127 days, and negotiated procedure with prior publication of a notice – 148 days. Chart 14.

Chart 14



Above-mentioned data show that significant postponement of reaching the decision for selection of most favourable tenderer and conclusion of contract. In fact, evaluation stage at contract award procedures lasted too long, even longer than the time limit for submission of tenders.

Promptness of contracting authorities, in terms of whether they respected the legal obligations for submission of Contract Award Notices and Records on Simplified Competitive Procedures can be seen through the concurrence between contract notices with the Contract Award Notices and the number of submitted Records in the course of 2009. In fact, the concurrence between each published notice (leading to conclusion of a contract) and contract award notice was around 75%. As regards the number of submitted Records in 2009, 579 Records were submitted in the first half and 577 Records in the second half of the year. Around 60% of the contracting authority submitted Records on Simplified Competitive Procedure. Although there is records that not all registered contracting authorities carried out procurement procedures, still, previous data, i.e. data from the submitted Contract Award Notices, in particular the one in the Records on Simplified Competitive Procedures, lead to the conclusion that promptness of contracting authorities was still not on a satisfactory level.

Below are presented data on the value of concluded contracts by contracting authority (a list of 10 largest public consumers in 2009), and by contract (list of 10 highest-value public contracts in 2009). (Tables 19 and 20) Data show that even around 20% of the total value of public contracts in 2009 account for the four highest-value concluded contracts.

Table 19

List of contracting authorities – 10 largest consumers in 2009	
Name of contracting authority	Total value of contracts (Denar)
Public Enterprise for Business and Housing Premises of the Republic of Macedonia	5,105,931,401
Ministry of Education and Science	4,655,636,290
Macedonian Power Plants joint stock company - Skopje	3,915,020,759
Agency for State Roads	2,757,196,777
Common Service Agency within the Government of the Republic of Macedonia	1,753,468,267
Ministry of Information Society	1,636,393,719
Ministry of Culture	1,550,543,813
EVN Macedonia joint stock company - Skopje	1,421,586,824
Directorate for Technological and Industrial Development Zones	1,026,183,840
Macedonian Forests public enterprise - Skopje	1,006,940,312

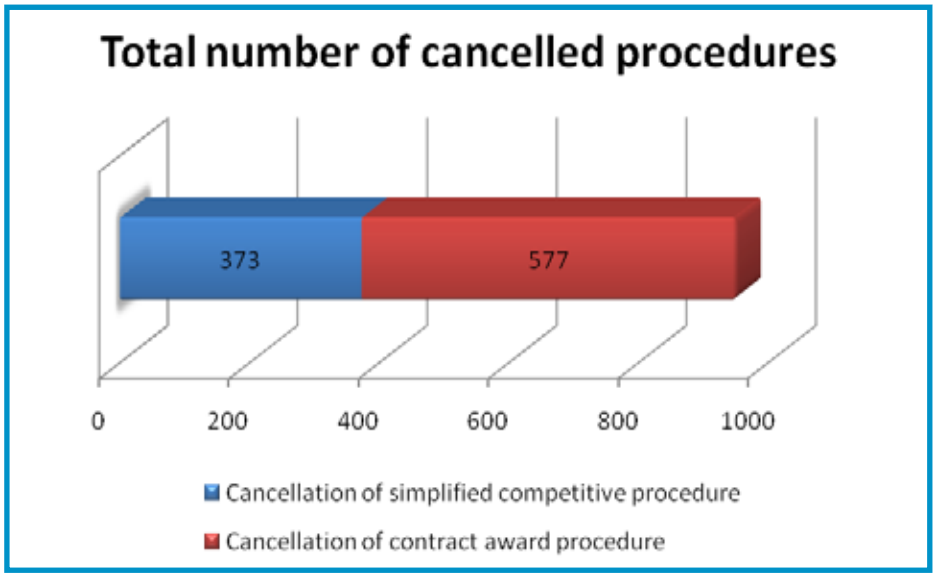
Table 20

List of 10 highest-value contracts concluded in 2009			
Subject-matter of procurement	Name of contracting authority	Contractor	Value of concluded contract
Construction and equipping of 145 school sports halls in the Republic of Macedonia	Ministry of Education and Science	Granit AD	4,229,386,482
Construction of east and west stands on the City Stadium – Skopje, reconstruction of south stands and reconstruction for sports field (wrestling ring and sports track)	Public Enterprise for Housing and Business Premises of the Republic of Macedonia	Construction company BETON joint stock company Skopje	3,617,287,802
Execution of construction and craftsmanship works for construction of administrative facility for Constitutional Court of the Republic of Macedonia, State Archives of the Republic of Macedonia and gallery premises	Common Service Agency within the Government of the Republic of Macedonia	Construction company GRANIT AD Skopje	1,526,039,299
Purchase of laptops for pupils and teachers	Ministry of Information Society	CT Computers DOO Belgrade and CT Computers MK Skopje	719,040,040
Execution of all stages for facilities 08.01 and 08.02 – East Industrial Zone Skopje	Public Enterprise for Housing and Business Premises of the Republic of Macedonia	TDGPKU Mavrovo Engineering DOO Skopje	689,637,715
Purchase, delivery, installation, assembly, testing and commissioning of equipment and installations envisaged in the main projects for stage and technological systems for the needs of the Old Theater Skopje	Ministry of Culture	"Svetlost Theater" DOO Belgrade	684,839,327
Purchase of EURODIESEL (D- E IV)	Public Transport Enterprise SKOPJE	MAKPETROL AD - Skopje	616,665,000
Construction of regional road K1-R-104, connection to R-104, Kolomot bridge, Blizansko Village	Agency for State Roads	DG Beton AD - Skopje	506,442,473
Excavation of coal and tailing in Brod-Gneotino coal excavation site, REK Bitola, supply of coal to TPP Bitola, with discontinued technology and approximate quantity of 8.000.000 m3	Macedonian Power Plants joint stock company - Skopje	Joint venture comprising GD GRANIT AD Skopje and DGU PELISTER DOO	492,000,000
Purchase of fuel oil M2, quantity 30,000 tons, according to MKS B.X.2 430 standard with maximum 2% sulphur and 30,000 liters heating oil EL	TPP NEGOTINO AD	OKTA Oil Rafinery joint stock company Skopje	482,000,000

5.9 Data from cancellation notices

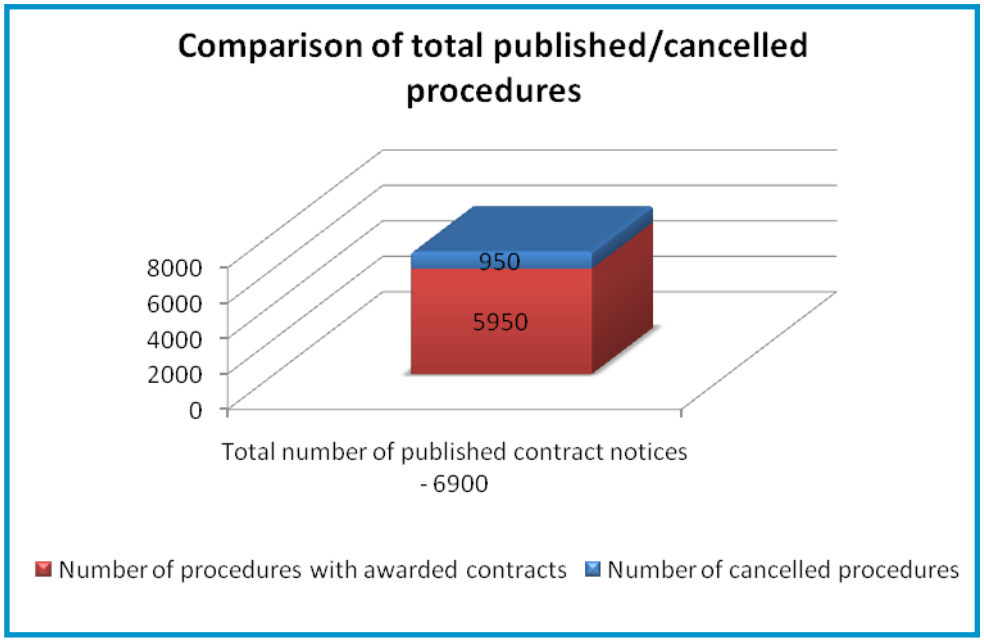
In the course of 2009, the Bureau received 1,174 cancellation notices for entire procedure or parts thereof, 412 out of which for simplified competitive procedures with publication of a notice and 762 for other procedures. It should be pointed out that these data include cancellation notices for entire procedure, as well as cancellation notices for partsthereof. Regarding cancellation of a whole contract award procedure, following data apply (Chart 15) - 373 cancellations of simplified competitive procedures and 577 cancellations of contract award procedures.

Chart 15



When analyzing above-stated data, one can conclude that 14% of published contract notices (including both types of notices) was cancelled in the course of 2009. Compared to 2008, cancellation of procedures increased (in 2008, it accounted for 10%).

Chart 16



Tables below (21-a and 21-b) present the reasons for cancellation of procedures. They show that procedures in 2009 were most often cancelled due to the following reasons:

- no acceptable tender was submitted;
- needs of the contracting authority changed due to unpredictable and objective circumstances, and
- tender documents had major shortcomings or faults.

Table 21-a

Information of the reasons for cancellation of the procedure or cancellation of parts of simplified competitive procedure	Number of cancelled procedures	Number of cancelled parts of procedure
no acceptable tender was submitted	106	7
no tender was submitted	73	15
acceptable tenders were submitted, but they cannot be compared due to different approaches in the financial or technical proposals	19	3
unforeseeable changes occurred in the budget of the contracting authority	34	1
tenderers offered prices and conditions for execution of the public contract which are less favourable than the real prices and conditions on the market	25	3
tender documents had major shortcomings or faults	55	5
needs of the contracting authority changed due to unpredictable and objective circumstances	35	4
contracting authority cannot select the winning tender due to major infringements to the Law on Public Procurement pursuant to Article 210 of this Law	18	0
State Appeals Commission cancelled the procedure	8	1
Total	373	39

Table 21-b

Information of the reasons for cancellation of the procedure or cancellation of parts of the contract award procedure	Number of cancelled procedures	Number of cancelled parts of procedure
number of candidates was less than the minimum number set for the contract award procedures pursuant to the Law	8	1
no acceptable tender was submitted	137	61
no tender was submitted	61	69
acceptable tenders were submitted, but they cannot be compared due to different approaches in the financial or technical proposals	32	1
unforeseeable changes occurred in the budget of the contracting authority	48	14
tenderers offered prices and conditions for execution of the public contract which are less favourable than the real prices and conditions on the market	38	10
tender documents had major shortcomings or faults	109	8
needs of the contracting authority changed due to unpredictable and objective circumstances	75	16
contracting authority cannot select the winning tender due to major infringements to the Law on Public Procurement pursuant to Article 210 of this Law	19	2
State Appeals Commission cancelled the procedure	50	3
Total	577	185

Chart 17 presents data on the ration between published contract notices and cancelled procedures on monthly basis in 2009. Table 22 shows list of the nine contracting authorities having most cancelled procedures in 2009.

Chart 17

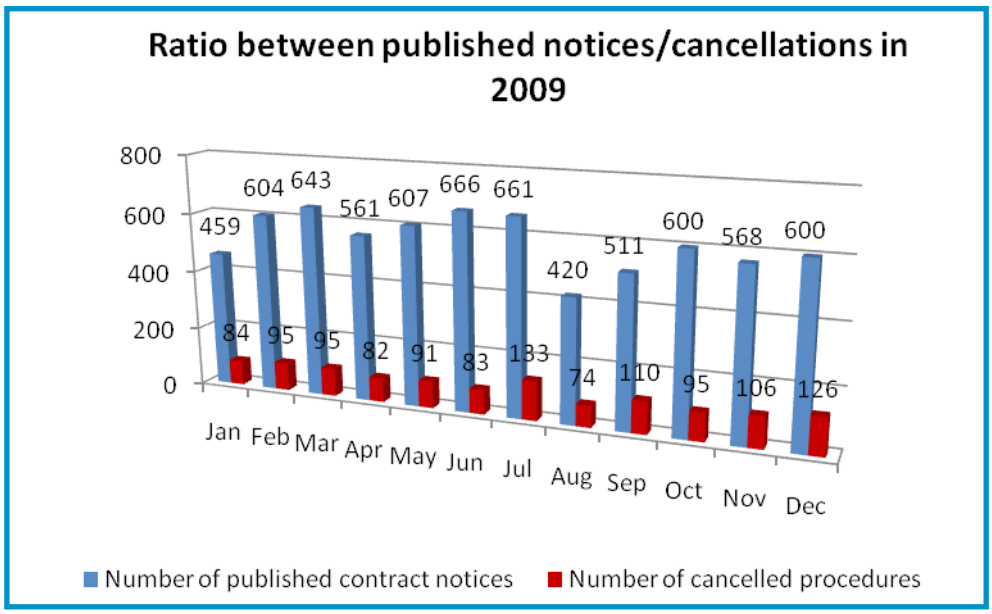


Table 22

Contracting Authority	Number of cancellations	Number of published contract notices
Macedonian Power Plants joint stock company - Skopje	121	474
Ministry of Defence	68	252
AD MEPSO	43	110
City of Skopje	35	151
National Bank of the Republic of Macedonia	23	59
Ministry of Economy	22	32
Kapros Municipality	21	116
Joint stock company for airport services “Airports of Macedonia” Skopje	18	93
Komunalec public utility enterprise - Prilep	17	44

5.10 Data from forms for amending and supplementing the contract notice

In 2009, total of 459 forms for amending the contract notice were sent to the Public Procurement Bureau. These data show that 7% of contract notices, after being published, underwent amendments or supplements to the contents of the contract notice and the tender documents.

6. Summary of Undertaken Activities related to ESPP in the course of 2009

6.1 Preparation of 2009-2010 Action Plan on Implementation of ESPP

In May 2009, the Bureau, with assistance of USAID e-Government Project and Human and Institutional Development Programme, prepared Action Plan, elaborating in details the activities related to ESPP implementation, process of integration of WPS in the single ESPP, as well as activities pertaining to further development and usage of ESPP.

Objective of the Action Plan was to set guidelines for the institutions involved in the process of implementation of e-procurement in the Republic of Macedonia, i.e. to set a framework for the activities to be implemented in the period 2009-2010. General goal of the Action Plan is to increase confidence, efficiency and transparency, as well as realising savings of budget funds in the field of public procurement by using ICT.

The Action Plan indentifies and respectively developes the following activities related to the development and usage of ESPP:

A. Integration of ESPP and WPS – This activity was undertaken so as to establish a unique, comprehensive and fully functional ESPP, as well as to establish better mechanism to monitor public procurement system, comprising several sub-activities, as follows:

- preparation of technical specification,
- development (code programming),
- testing,
- current maintenance and periodical upgrades,
- migration/re-registration of WPS users in ESPP,
- purchase and installation of harware/selection of hosting institution, and
- audit of IT security of ESPP.

B. Training – This activity was undertaken so as to increase confidence, efficiency and transparency in public procurement procedures, comprising several sub-activities, in particular the following:

- training of contracting authorities and economic operators,
- tailor-made training for the State Appeals Commission and the State Audit Office,
- presentations of e-signature and study visits.
- The Bureau organised the trainings on the basis of pre-defined plan and dynamics, supported by USAID projects.

C. User support – This set of activities was undertaken for the purpose of easier implementation of the ESPP and as additional way to expand the knowledge of ESPP users, comprising the following sub-activities:

- preparation of new detailed technical manuals on the manner of using the ESPP,
- preparation of brochures, guidelines and other publications,
- preparation of uniformed forms, as well as
- cooperation with other institutions and day-to-day user support to both contracting authorities and economic operators.

D. Raising awareness/promotion activities - This activity was undertaken so as to increase confidence, efficiency and transparency in public procurement proceduresby using the ESPP, comprising several sub-activities, in particular the following: raising awareness of the contracting authorities, economic operators and the public as regards the integrated system, preparation of promotional materials, promotion of the integrated system and informations to the public on regular basis.

PPB established a working group in charge of realising the Action Plan.

6.2 Integration of WPS and ESPP

In the course of 2009, the Bureau put strong efforts in establishing a unique electronic system for public procurement - ESPP (Law on Public Procurement uses only this term), which integrates the two existing electronic systems for public procurement - ESPP and WPS, which also includes the process of preparation, publication of contract notices and contrat award notices and application of different types of procedures in electronic form and carrying out e-auctions.

Integrated ESPP is a central medium – ALL ON PUBLIC PROCUREMENT IN ONE PLACE, ensuring all data on public procurement in the Republic of Macedonia, thus providing for better efficiency and transparency in the overall public procurement system.

Main features of both separate systems are the following:

- Web Publication System (WPS) -

  https://oglasi-izvestuvanja.finance.gov.mk – was a web-based public procurement system managed by the Bureau and all contracting authorities were obliged to use it for publishing contract notices and contract award notices.

- Electronic System for Public Procurement (ESPP) - https://www.e-nabavki.gov.mk – was web-based software solution designed and financed by USAID e-Government Project, which provided for carrying out contract award procedures by using electronic means. In March 2009, ESPP software solution was delivered to the Bureau to manage it. When carrying out procedure through the ESPP, all procedure-related activities (publication of contract notice and tender documentation, submission of tenders, public opening and evaluation, decision making, notifications on decisions made, communication with economic operators) are carried out electronically, and part of them are automated. At the same time, e-auction, as last stage in a given procedure, can be carried out through the ESPP.

In the course of 2009, the Bureau, supported by USAID e-Government Project, worked intensively on designing the concept for integration of both systems, defining the technical specification of functionalities of the integrated system, and monitored the development of the software solution. Therefore, number of coordination and operational meetings were held, attended by representatives from the Bureau, USAID e-Government project and designer of the software solution.

Technical integration of both systems was carried out by Seavus IT Company, which financially supported it with EUR 60,000 in Denar equivalent, Ministry of Information Society, as well as USAID Mission to Macedonia, participating with EUR 15,000 in Denar equivalent.

In fact, goal of introducing a unique public procurement system was to facilitate public procurement procedures, use already acquired level of knowledge with the web information system and increase use of e-procurement. In addition, the Bureau will, through the new ESPP, easier monitor the fulfillment of the obligation of contracting authorities to gradually carry out e-auctions on compulsory basis. In fact, pursuant to Article 24 of the Law on Modifications and Amendments to the Law on Public Procurement, contracting authorities are obliged to apply e-auction, in particular:

- in at least 30% of the estimated value of the planned contract award procedures from 1 January 2010,
- in at least 50% of the estimated value of the planned contract award procedures from 1 January 2011, and
- in 100% of the estimated value of the planned contract award procedures from 1 January 2012.

Activities related to the integration of both systems were complete at the end of 2009, and the integrated system for public procurement (ESPP) was put in operation in January 2010. ESPP is a

complex system, constantly requiring maintenance and upgrading, keeoing track of novelties in the field of e-procurement.

6.3 Carried out e-procurements and e-auctions in the course of 2009

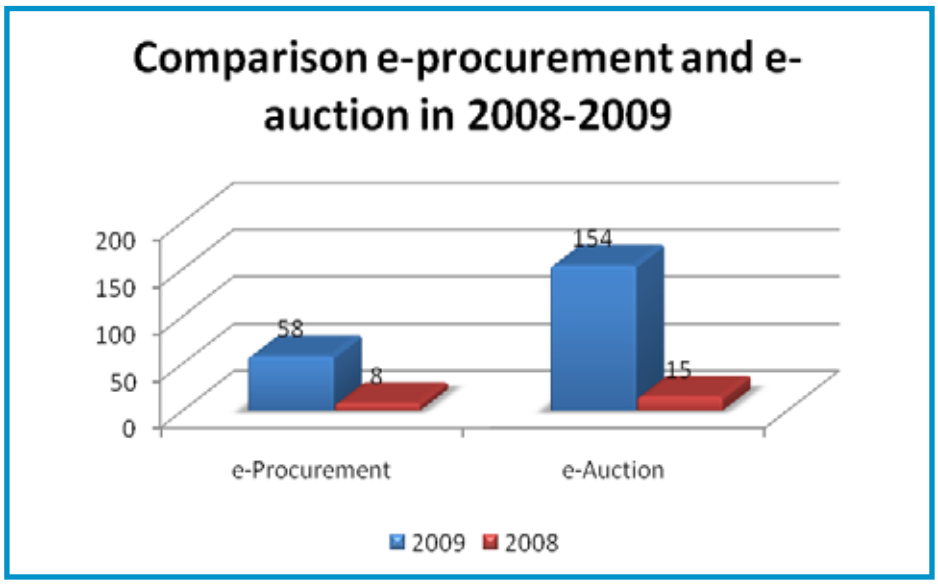
In 2009, only 27 out of the registered contracting authorities published contract notices and carried out e-procurement or e-auction through the ESPP, and only 18 out of them carried out more than one e-procurement or e-auction. In 2009, most of the e-procurement or e-auctions were carried out by the following contracting authorities:

- Ministry of Information Society - 50 e-auctions;
- Public Enterprise for Housing and Business Premises of the Republic of Macedonia – 33 e-auctions;
- Customs Administration - 12 e-procurements and 5 e-auctions;
- Aerodrom Municipality - 14 e-auctions;
- State Lottery of Macedonia joint stock company - 9 e-auctions;
- Central Registry of Republic of Macedonia - 8 e-procurements;
- Ministry of Transport and Communications – 7 e-procurements, 6 out of which ended with e-auctions;
- Common Service Agency within the Government of the Republic of Macedonia - 5 e-auctions;
- Pension and Disability Insurance Fund – 5 e-procurements.

Threre were 58 e-procurements carried out through the ESPP in 2009, showing an increase by almost six times compared to the number of carried out e-procurement in 2008 (8 e-procurements). Chart 18 shows comparison between e-procurement carried out at annual level and carried out e-auctions.

154 e-auctions were carried out in 2009, as a last stage in e-procurement procedures or procedures previously carried out in a paper form, showing an increase by almost ten times compared to the number of e-auctions carried out in 2008 (15 e-auctions).

Chart 18



6.4 Realised savings on the basis of carrying out e-auctions when awarding public contracts

In the course of 2009, 154 e-auctions were scheduled, 92 out of which were successfully carried out (tenderers reduced prices), i.e. 6% average savings were real ised or Denar 168,765,764 in absolute terms (or around EUR 2,750,000), calculates as difference between the initial price at the e-auction (lowest price of all tenders previously evaluated and accepted for participation in the e-auction) and the final price at the e-auction, i.e. the value of the concluded contract.

7. Cooperation with State Bodies

Taking into account that coordination with all institutions included in the public procurement system is of special importance for enhancement of the system and achievemt of good results, the Bureau intensively cooperated with other relevant institutions.

Hence, when realizing its activities and performing its tasks, by organizing working meetings, Public Procurement Bureau cooperated with the following institutions: State Appeals Commission, State Audit Office, Commission for Protection of Competition, Administrative Court of Republic of Macedonia, Atate Anti-Corruption Commission, etc. What is common for all state bodies with which cooperation was real ised is that they are mainly “watchdogs” of the policy and the practicies of public procurement in the Republic of Macedonia, responsible to ensure legality, rationality, efficiency, transparency and enhancement of competition. This contributes to increasing communication between the bodies directly involved or having common grounds with the public procurement system.

Feedback information from state bodies, such as State Appeals Commission and State Audit Office were of great importance in the past period when monitoring the functioning of the public procurement system, since this information provide for detecting weaknesses in the legal regulations, as well as point out the needs to improve them.

In the course of 2009, the Bureau continued to submit opinions on proper application of the Law and the bylaws to the State Appeals Commission, as well as the State Audit Office. So-far functioning of the Bureau points out to the need for further intensification of the cooperation with the State Appeals Commission, so as to build mechanisms for proper and uniform functioning of the public procurement system in the Republic of Macedonia, as well as its upgrading in terms of implementing EU Directives on public procurement and good international practice.

8. International Cooperation

Activities the Bureau undertook in the field of international cooperation in 2009 were the following:

SIGMA

In the course of 2009, cooperation with SIGMA experts continued through consultations and providing opinions and proposals by SIGMA when preparing the models of standard tender documents. In addition, in cooperation with SIGMA, following manuals were prepared: Manual on Tender Evaluation – regulations and experience in the EU and the Republic of Macedonia, Manual on Awarding Non-Priority ("B") Services and Manual on Framework Agreements – EU regulations and experience. Several seminars were organised in cooperation with SIGMA, mainly covering review procedures in public procurement in the EU and EU candidate countries, and experience of EU Member States in applying framework agreements and central purchasing bodies. At the same time, the Bureau, together with SIGMA representatives, held working meetings at which projects were discussed on training in public procurement in IPA countries, as well as pilot training in testing modules for public procurement training in IPA countries. The Bureau also participated in the Second International Conference - Review on public procurement and remedies system, organised by SIGMA.

USAID Projects

Worth mentioning is the cooperation the Bureau had with USAID in 2009, in particular the personnel and administrative assistance extended to the Bureau when organising trainings and seminars in public procurement. Cooperation with USAID in 2009 was also extended in the field of building new and upgrading the existing capacities of the Bureau so as to respond efficiently to the tasks and duties. Hence, of special significance was the technical assistance extended in the form of donations in IT equipment and office supplies and furtniture necessary to equip the Public Procurement Training Centre of the Bureau. The Bureau, in cooperation with USAID, in addition to preparing tender documents for the procedures carried out electronically, it organised trainings for contracting authorities and economic operators to use the ESPP.

Projects USAID realised in cooperation with the Bureau in 2009 were the following:

- USAID's World Learning, through which organisational setup and functioning of the Bureau were scanned and recommendations for their improvement were provided. The project was also involved in the preparation of the train-the-trainer programme, which is still ongoing;
- USAID Business Environment Activity, which extended assistance when preparing the Law and the bylaws, trainings in implementation of the legal framework, preparing brochures and CDs, as well as involvement in the the train-the-trainer programme, and
- USAID e-Government Project, which worked on the development and promotion of the Electronic System for Public Procurement, now fully managed by the Bureau. In cooperation with the Project, number fo trainings were organised in using the electronic system.

EC Advisory Committee on Public Contracts

Advisory Committee on Public Procurement is an advisory body of the European Commission, the objective of which is to open for discussion problematic issues the Member States face in the public procurement system established with the EU Directives on public procurement, at which future changes and new solutions EU should introduce in its legislation are discussed. After being granted candidate country status, Republic of Macedonia participates in this Committee as an observer. Representatives of the Republic of Macedonia are usually Bureau employees.

World Bank

World Bank, in cooperation with the Bureau, started pilot project on the use of country procurement systems in Bank financed projects. Goal of the pilot project is to support the progrees in the development of national systems for public procurement in the countries having shown significant progress in public procurement, such as the Republic of Macedonia. The Project comprised three stages, as follows:

- first stage, World Bank team scanned and evaluated the national system for public procurement in the Republic of Macedonia;
- second stage, focus was placed on harmonisation of practices in public procurement with those of the Bank, and
- third stage, it was determined which Bank's projects would be included in the

  national regulations on public procurement and implementation of a pilot project would commence.

9. Proposals for Improvement of Public Procurement System

On the basis of the information the Public Procurement Bureau receives on the functioning of the public procurement system and the difficulties contracting authorities and economic operators face when applying the contract award procedures, as well as the irregularities when implementing them, the Bureau gives the following proposals for improvement of the public procurement system in the Republic of Macedonia:

- intensifying the training activities of contracting authorities on proper application of the Law on Public Procurement, focusing on certain parts as preparation of tender documents, evaluation, preparation of contract award notices, e-auctions, etc.;
- finalising the process of transposing EU Acquis in the field of public procurement, in particular review procedures;
- intensifying the exchange of information with other institutions that have certain control functions in the public procurement system, mainly the State Appeals Commission and the State Audit Office;
- identifying the provisions in other legal solutions having limiting effects on public procurement and derogating the basic principles of the Law on Public Procurement and public procurement in general;
- establishing automatic control over respecting legal time limits and consistent submission of records on simplified competitive procedures and contract award notices to the Bureau;
- attending training programme on public procurement organised by the Bureau, to the end of professionalisation of the entities carrying out public procurement;
- mandatory use of e-auctions in line with the minimum requirement of 30% envisaged in 2010, pursuant to the modifications and amendments to the Law;
- precisely defining contract award criteria in the tender documents and explaining their weighting;
- maximum use of the possibility to publish tender documents on the ESPP;
- shortening the period for evaluation of tenders and selection of winning tender;
- precisely defining the detailed technical specification, which sets all qualitative parameters to the end of applying the lowest price criterion when awarding contracts, and consequently carrying out e-auctions as last stage in simplified competitive procedure, open procedure, restricted procedure, but only in cases when it is comprehensive, and
- intensifying the support the Bureau was extended, in particular from financial and administrative point of view, which will additionally strengthen its capacities to monitor and improve the public procurement system.

Skopje, **5 May 2010**	**DIRECTOR** **Mare Bogeva Micovska MA**